140-334
140-334

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1890.

No. 262.

THE ESSEX PUBLIC ROAD BOARD, PLAINTIFF IN ERROR,

vs.

JACOB SKINKLE.

IN ERROR TO THE SUPREME COURT OF THE STATE OF NEW JERSEY

FILED OCTOBER 19, 1887.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1890.

No. 262.

THE ESSEX PUBLIC ROAD BOARD, PLAINTIFF IN ERROR,

vs.

JACOB SKINKLE.

IN ERROR TO THE SUPREME COURT OF THE STATE OF NEW JERSEY.

INDEX.

	Original.	Print.
Writ of error from court of errors and appeals	1	1
Return on writ of error	2	1
Assignment of errors	3	2
Transcript from Essex circuit court	4	2
Petition	4	2
Evidence taken under rule to show cause	10	6
Testimony of Henry W. Egner	10	6
Charles W. Harrison	11	7
Abram Voorhees	17	11
Elias K. Williams	25	17
Joseph C. Whitaker	28	19
Isaac O. Wade	34	23
James M. Tichenor	45	30
Elias W. Durand	46	31
Frederick Hedden	49	33
Timothy W. Lord	52	35
Samuel Morrow	54	37
Jacob Skinkle	61	41
Norman I. Macomber	65	44
Mahlon Stockman	68	46
James Peckwell	69	47
Daniel M. Hedden	74	51
James Peckwell	81	56
Jacob Skinkle	83	57
Elias W. Drake	87	59
Mahlon S. Drake, Jr.	91	63
David S. Smith	97	67

JUDD & DETWEILER, PRINTERS, WASHINGTON, AUGUST 21, 1890.

	Original.	Print
Testimony of Elias O. Doremus	100	69
Nathaniel Drake	102	70
John Criqui	105	72
Certificate of case to supreme court of New Jersey	107	73
Opinion of supreme court of New Jersey	109	74
Advisory rule of supreme court of New Jersey	117	79
Order appointing arbitrators	118	80
Oath of arbitrators	120	81
Notice to appear before arbitrators	123	82
Consent as to evidence	124	83
Report of arbitrators	125	83
Minutes of meetings	128	85
Order to file report of arbitrators	130	86
Writ of certiorari	131	86
Return on writ of certiorari	131	87
Reasons on certiorari in supreme court of New Jersey	132	87
Opinion on certiorari in supreme court of New Jersey	133	88
Rule of affirmance in supreme court of New Jersey	136	89
Opinion of court of errors and appeals	137	90
Certificate to opinion	150	97
Judgment and remittitur	151	97
Certificate to judgment	152	98
Bond	153	98
Citation and proof of service of same	154	99
Assignment of errors	155	99
Writ of error	156	100
Return on writ of error	157	101

1 Court of Errors and Appeals.

THE STATE (THE ESSEX PUBLIC ROAD BOARD, Prosecutor) *vs.* JACOB SKINKLE. } On Error to Supreme Court.

Case.

(*Writ of Error.*)

NEW JERSEY, ss:

[L. S.] The State of New Jersey to the justices of the supreme court of the State of New Jersey, Greeting:

Because in the record and proceedings and also in the giving of judgment in a certain plaint, which was in our said supreme court, before you, between The State of New Jersey (The Essex Public Road Board, prosecutor) and Jacob Skinkle, on a certain writ of certiorari issued out of our said supreme court, manifest error has intervened, as is said, to the damage of the said The Essex Public Road Board, as by its complaint we are informed, we, being willing that the error, if any there be, should in due manner be corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you that if judgment be given thereupon, then, without delay, you, distinctly and openly, send, under your seal, the record and proceedings aforesaid, with all things touching the same, to our court of errors and appeals, to be held at Trenton, on the twenty-fifth day of November instant, together with this writ, that,
2 the record and proceedings aforesaid being inspected, we may further cause to be done what of right and according to law ought to be done.

Witness Theodore Runyon, Esq., our chancellor, at Trenton aforesaid, the sixth day of November, A. D. eighteen hundred and eighty-six.

HENRY C. KELSEY, *Clerk.*

JOHN W. TAYLOR, *Att'y.*

(*Return.*)

The answer of the justice of the supreme court of New Jersey within named, the record and proceedings whereof mention is within made, with all things touching and concerning the same, we do certify to the court of errors and appeals in a certain schedule to this writ annexed, as within we are commanded.

M. BEASLEY, *C. J.*

3 (*Assignment of Errors.*)

Court of Errors and Appeals.

THE STATE (THE ESSEX PUBLIC ROAD BOARD, Prosecutor) *vs.* JACOB SKINKLE. } On Error to Supreme Court.

Afterward—that is to say, on the twenty-fifth day of December, A. D. 1886—before the court of errors and appeals of the State of New Jersey, comes the said plaintiff, by John W. Taylor, its attorney, and says that in the record and proceedings aforesaid and also in the giving of judgment aforesaid there is manifest error in this, to wit, that by the record aforesaid it appears that the proceedings and assessments therein mentioned were in all things affirmed with costs, whereas the said proceedings and assessments should have been reversed, set aside, and for nothing holden, with costs. There is error also in this, to wit, that by the record aforesaid it appears that the judgment aforesaid, in form aforesaid, was given for the said defendant against the said plaintiff and prosecutor, whereas by the law of the land judgment ought to have been given for the said plaintiff and prosecutor against the said defendant.

And the said plaintiff prays that the judgment aforesaid, for the errors aforesaid and for other errors in the record and proceedings aforesaid, may be reversed, set aside, and for nothing held, and that the plaintiff may be restored in all things which it has lost by occasion of the judgment aforesaid, &c.

JOHN W. TAYLOR,
Att'y for Pl'ff in Error.

4 (*Schedule.*)

Essex Circuit Court.

JACOB SKINKLE, Petitioner,
and
THE ESSEX PUBLIC ROAD BOARD, Respondents.

To the Honorable David A. Depue, a justice of the supreme court, holding the circuit court in the county of Essex:

The petition of Jacob Skinkle, a citizen of the said county of Essex, respectfully presents—

First. That the respondents, The Essex Public Road Board, are a corporation incorporated under an act of the Legislature of this State entitled "An act constituting a public road board, for the laying out, constructing, appropriating, improving, and maintaining public carriage roads in the county of Essex," approved March thirty-first, eighteen hundred and sixty-nine, and the several supplements thereto; that under and by virtue of said act of incorporation and the supplements thereto the said road board are now acting, and have been from the date of their organization, and have,

under said charter and the supplements thereto, authority for the laying out, opening, widening, and straightening, changing the grade, and paving or repaving any public road, street, or avenue within the said county of Essex, which lies outside of the corporate limits of the city of Newark, and to provide for and cause to be made, in accordance with the provisions of the said charter and its supplements, assessments to be levied upon the lands and premises lying along the line of any such public road, street, or avenue which may be opened, widened, straightened, changed in grade, paved or repaved by them for the amount of the peculiar benefits which may accrue to such land and real estate or the owners thereof for the improvements arising therefrom.

Second. The petitioner further presents that said respondents, by virtue of the power conferred upon them heretofore, to wit, prior to the year eighteen hundred and seventy-six, opened and widened, in the county of Essex and outside of the corporate limits of the city of Newark, under and by virtue of the authority conferred by said charter or its supplements, Springfield avenue, in the county of Essex, and also prior to the year eighteen hundred and seventy-six caused further improvements on said avenue for extra paving thereon, and afterwards, to wit, prior to the year eighteen hundred and eighty-one, caused other improvements to be made upon the said avenue for the change of the grade thereof; that the said respondents took proper measures to cause the benefits to be assessed to property-owners along said avenue for said opening and other improvements, and did cause to be assessed upon the land of your petitioner lying along said avenue the following sums: "For opening said avenue, nine hundred dollars;" and for which amount, with the interest and costs (in the total being $1,144.40), the lands hereinafter described were sold on the twenty-sixth day of December, eighteen hundred and seventy-six; for extra paving, assessed October thirteenth, eighteen hundred and seventy-three, $890.74; for changing grade, sold September fifth, eighteen hundred and eighty-one, for $134.81; that the land and real estate upon which said assessments were made at the time of making thereof stood in the name of Caleb B. Headley, who was then the owner thereof, and your petitioner was at that time mortgagee thereof, but since said sale has become the owner thereof by the purchase of the property under said mortgage so held by your petitioner at the time of the making of the said improvements and the laying of said assessment; that said land and real estate are described as follows: "Situated at the corner or junction of Clinton avenue and Springfield avenue, in the village of Irvington, Essex county, New Jersey. Beginning at a point in the southerly line of Springfield avenue at the northwest corner of land of estate of Samuel H. Gardner, thence running along said land south 31 degrees 20 minutes west 161 feet to the northeasterly line of Clinton avenue; thence along said line north 58 degrees 40 minutes west 150 feet to the southerly line of Springfield avenue; thence along said line north 80 degrees and 20 minutes east 237 feet and six inches to the beginning;" that all said assessments on the above-described prem-

ises, together with interest thereon, remain unpaid. In addition thereto there are tax liens on said property that are unpaid for State, county, township, and other purposes to the following amounts for the following years:

For 1876	$52 68
For 1877	41 83
For 1878	37 37
For 1879	41 17
For 1880	34 87
For 1881	30 16
For 1882	24 00

which makes a total of assessments, taxes, and other liens, exclusive of the interest thereon at this date, of $2,432.03; that the rates of interest upon all said assessments and tax liens are large and will greatly increase said amount, making the taxes, assessments, and interest against said property at this date above three thousand dollars.

Thirdly. Your petitioner further presents that on the twenty-fifth day of September, eighteen hundred and eighty-two, he applied by petition in writing to the said respondents, under and by virtue of the provisions contained in the act of the Legislature of this
7 State approved March thirty-first, eighteen hundred and eighty-two, entitled "An act to authorize the compromising or settling by arbitration for any taxes or assessments laid by any road board in this State," for an agreement and compromise of said assessment so laid under the acts of incorporation of the respondents above referred to upon the property above described; that the said respondents entertained the application of your petitioner and considered the same, but failed to invite your petitioner to a conference with them in relation thereto, or any one on his behalf, or with any one on their behalf; that subsequently to the filing of the said petition the respondents notified J. Frank Fort, Esq., the attorney of your petitioner in said matters, by letter, dated October third, eighteen hundred and eighty-two, that at a meeting held on the second day of October a resolution in relation to your petitioner's application was adopted, said letter being as follows:

"OFFICE OF ESSEX PUBLIC ROAD BOARD,
810 BROAD STREET, NEWARK, N. J., *October 3d*, 1882.

James Peck, president; George B. Cornish, clerk and collector.

J. Frank Fort, Esq.

DEAR SIR: The Essex Public Road Board, at its meeting held yesterday afternoon, second instant, adopted the enclosed resolution, which I was directed to hand to you as counsel for Mr. Skinkle.

Yours truly, GEO. B. CORNISH, *Clerk*."

That the resolutions referred to in said letter as having been adopted on the second day of October, and which accompanied said letter, were as follows:

"In the Matter of the Application of JACOB SKINKLE for a compromise of the assessments upon his land in the township of Clinton, assessed in the name of Caleb B. Headley, for the benefits arising from the laying out, constructing, regrading, &c., of Springfield avenue, in said township.

8 "Whereas this board, upon a full and careful examination of the above assessments and the facts and circumstances relating thereto, are satisfied that the said assessments are just and moderate in amount and not more than the due proportion pertaining to said land:

"It is therefore resolved that the said application be respectfully declined."

A true copy.

GEO. B. CORNISH, *Clerk.*

Fourth. Your petitioner further presents that this application is made to your honor under and by virtue of the provisions of the act of the Legislature of this State, approved March thirty-first, eighteen hundred and eighty-two, last above referred to, for the appointment of three disinterested freeholders as arbitrators to settle and adjust the matters in difference between your petitioner and the respondent relative to the said assessments on said real estate, and your petitioner presents that this application is well grounded and entitled to the consideration of this honorable court, for the reason that the total value of the said lands and real estate above described, upon which assessments are now a lien, together with said unpaid taxes above stated, is not in value in excess of the sum of fifteen hundred dollars, and by many placed at a not greater value than twelve hundred; that the valuation of said property will appear by the affidavits of the various persons following, and which are hereto annexed, viz: Samuel Morrow, Jr., James Peckwell, N. I Macomber, Ira Stockman, Joseph A. Whittaker, Frederick Hedden, Elias M. Durand, Charles W. Harrison, Isaac O. Wilde, Abram Voorhees, James M. Tichenor, all of which affiants are resident in the vicinity of said property and perfectly conversant, and have been for years, with the value thereof, and that the said valuations your petitioner believes to be just and fair and a reasonable and sound price for said land and premises, as between a person who might desire to buy the same and one willing to sell.

9 Fifth. In consideration of the premises your petitioner respectfully submits that if the facts related in this petition shall appear to your honor to be true that then and in that case your honor shall, in accordance with the statute in such case made and provided, adjudge and decide that the case of your petitioner is a proper case for arbitration, and that your honor do thereupon appoint three disinterested freeholders as arbitrators to settle and adjust the matter in difference between your petitioner and the said Essex Public Road Board, the respondents, in accordance with the provision of the statute for such case provided, &c.

And your petitioner will ever pray, &c.

J. FRANK FORT,
Att'y of Petitioner, &c.

(Here follow affidavits and verifications, &c.)

On this petition a rule to show cause was granted, with leave to take affidavits, returnable January 3, 1883.

Essex Circuit Court. September Term, 1883.

JACOB SKINKLE, Petitioner, and THE ESSEX PUBLIC ROAD BOARD, Respondents.	On Petition for Arbitrators on Assessments, &c.

The above-stated cause came on to be tried on the thirteenth day of October, A. D. 1883, before the Honorable David A. Depue, judge of the said circuit court, pursuant to a rule to show cause made therein, on the petition and proofs therein filed (*pro ut* the pleadings).

The following is the evidence taken under the rule to show cause in this case:

HENRY W. EGNER, a witness produced on the part of the aforesaid petitioner, having been duly sworn on his oath according to law, deposeth and saith:

Direct examination by Mr. FORT:

Q. You are the register of the county of Essex?
A. Yes, sir.
Q. In your charge are there any maps and papers?
A. Yes, sir.
Q. Have you any road-board maps?
A. Yes, sir.
Q. Did you produce one here this morning?
A. I did.
Q. Just state the dates, please.
A. This is a map for the widening of Springfield avenue by the Essex County Road Board. It is in box No. 19.

11 Q. Date of filing, please?
A. Seventh day of August, 1869.
Q. Is this the original?
A. This is the original map which is on file now at the register's office.
Q. Do you find on that map the description of property bearing the name of Caleb B. Headley?
A. Yes, sir.
Q. This map bears the signatures of the five commissioners originally, does it not?
A. Yes, sir.

CHARLES W. HARRISON, a witness produced on the part of the aforesaid petitioner, having been duly sworn on his oath according to law, deposeth and saith:

Direct examination by Judge FORT:

Q. You reside in the township of Clinton?
A. I do.
Q. Springfield avenue runs through that township?
A. Yes, sir.
Q. How long have you resided there, Mr. Harrison?
A. About thirty-two years, I think it is.
Q. What is the office that you hold out there?
A. President of it.
Q. You were president of the village for two or three years, were you not, lately?
A. For a year or two.
Q. Within two or three years?
A. Yes, sir.
Q. You are acquainted with the value of property in the village?
A. Somewhat.
Q. Did you reside there at the time the Essex Public Road Board widened Springfield avenue?
A. Yes, sir.
Q. At the time they changed the grade?
A. Yes, sir.
12 Q. And paved it?
A. Yes, sir.
Q. Do you remember the doing of those three particular works?
A. Yes, sir.
Q. Are you acquainted with the property that is now the property of the petitioner in this case?
A. Yes, sir.
Q. Formerly the property of Caleb B. Headley?
A. Yes, sir.
Q. Just tell me whereabouts on the map that lies there before you it is.
A. It is at the junction between Clinton and Springfield avenues.
Q. It is a triangular piece of property, isn't it?
A. Yes, sir.
Q. Does it run to a point now as it at present lies?
A. Yes, sir; it runs to a point.
Q. Do you own any property or have you owned any property in that immediate neighborhood, Mr. Harrison, lately?
A. I own property a quarter of a mile from there—perhaps a quarter of a mile.
Q. Do you know of any property having been sold in that immediate neighborhood lately?
A. I do not.
Q. With reference to the value of that piece of property at the junction of Clinton and Springfield avenues and the purposes to which it can be put, will you please give us your judgment on that?

A. Well, if I fixed a valuation upon it I would fix a valuation in the neighborhood of $1,500.

Q. Well, is that valuation a valuation on a basis of what it is in your judgment worth, or on a basis of what it would sell at auction?

A. Well, it is a hard matter at the present time to fix the value of real estate in our city, for the reason of no sales. I know of no sales at the present time.

13 Q. Whether the value was fixed upon a basis of a forced sale or private sale, what it would really be worth?

A. I should fix that valuation as a fair valuation, not at a forced sale.

Q. Now, how many lots could be made out of that property; could it be made into lots in the shape it is?

A. Since I was here looking the map over—I never knew the number of feet it contained.

Mr. TUYLOR: I object to all testimony or evidence as to the present value of the property.

Q. Now, Mr. Harrison, just answer the question—as it now lies?

A. Well, I never knew the number of feet, but I judge from my eye on the property—I pass the property frequently—from frequently passing it my judgment has been heretofore that there was not more than 100 or 150——

Q. Tell us on this plot here—is this about your idea, this drawing that I show you?

A. Yes, sir. It would be two good building lots, perhaps 125 or 150, with sufficient depth for two building lots.

Q. And the point?

A. I don't consider the point of much value beyond that.

Q. Do you remember whether there were any buildings upon that property at the time the road board widened it?

A. I know there were buildings on it.

Q. What became of them at the time in the first instance?

A. When the road board first moved in that matter there was a large stone house on the property.

Q. They condemned that?

A. Most of it was on the road and they condemned that and it was sold at auction.

Q. By the road board?

A. By the road board.

Q. And there was a wooden building?

14 A. There was an attachment to that stone building that was not interfered with by the road board; that was left and is still standing there; it stands there yet. Mr. Headley then, I think, moved that back a little further and made a dwelling of it.

Q. They were both within the lines of that condemnation in widening, were they not?

A. They were so far that they had to remove them off of the avenue when they sold them. Mr. Buchanan bought them.

Q. Mr. Harrison, the difference in value between the buildings on

the property now and the buildings on the property when the road board condemned it—and the buildings they took away, rather?

A. The building that is there now is a part of the building they condemned; the remainder was a stone fort or stone house—a large stone building—that was taken.

Cross-examination by Mr. TAYLOR:

Q. Mr. Harrison, what knowledge have you in regard to the value of property in Irvington?

A. Well, I don't know that I have any more reason to know the value of property than simply from residing there.

Q. Have you been a real-estate agent there?

A. Never; no, sir.

Q. Made sales of property yourself?

A. No, sir.

Q. You are acquainted with the location, I suppose?

A. Oh, yes.

Q. Isn't this in the center of the town or village?

A. Yes, sir.

Q. Considered generally the most desirable portion of the town for business?

A. Yes, sir; in one respect.

Q. Nearly opposite the hotel?

A. Yes, sir.

Q. Do you know what was the value of those premises in 1873?

15 A. 1873? I don't know.

Q. Do you know for what that property has been sold otherwise than at public sale?

A. I think that Mr. Headley paid $1,500 for the property previous to the road board taking it.

Q. When?

A. Well, some time before the road board talked about going through there. It must have been three or four years.

Q. Property was a good deal higher in 1873?

A. Oh, yes, sir.

Q. Than it is now and than it was when Mr. Headley bought it, was it not?

A. Yes, sir; he bought it—he must have bought it——

Q. Do you remember when the assessment was made upon it by the road board?

A. For benefits?

Q. Yes. I don't ask you about the time. Do you remember the occasion or about the time?

A. Yes, sir; I remember when they made the assessment.

Q. Do you know what the property was assessed for?

A. What was the valuation of the property by the foot or acre?

Q. Do you know the amount of the assessment against it for widening—first assessment?

A. I don't know as I know what the assessment was for widening.

Q. You were not one of the commissioners, were you, there?
A. No, sir.
Q. Do you know whether Mr. Skinkle has removed from the lot any building since he has become the owner?
A. There was a little building there.
Q. Do you know whether he has removed any building from the lot since he became the owner?
A. There was a little building on the point that belonged
16 to Mr. Drake that keeps the feed store. I think that building has been removed. I know that building has been removed since.
Q. Who removed it?
A. I presume Mr. Skinkle removed it.
Q. Do you know when?
A. Three or four years ago.
Q. It was on this lot?
A. It was on the point.
Q. That is on the lot?
A. On the lot.

COUNSEL: That is all.

Redirect examination:

Q. Mr. Harrison, who put the building on the lot, do you know?
A. Mr. Drake leased the ground.
Q. Mr. Drake put it on there while he was a tenant?
A. Mr. Drake built the building.
Q. Did he put the building on after the assessment or before—since 1873?
A. If my memory serves me right, it was about that time; after the road was widened, I think.
Q. You have been asked in reference to your knowledge as to sales of real estate in that neighborhood. Have you been conversant or not with sales that have been made for property there and prices paid by other parties?
A. I don't know of any very recently. The last year or two past there has been one or two sales—the Crawford property.
Q. Then I suppose most of the people in that neighborhood own their own property and it don't pass from one to the other very much?
A. Very little property changed hands, to my knowledge, in Irvington.
Q. Do you know Dr. Smith, one of the commissioners of the road board?
A. Yes, sir.
Q. Was he executor for the estate of John Crawford?
A. I believe he was.
17 Q. Do you know of sales of property just below this tract a little distance?
A. Yes, sir.
Q. What did that bring a lot? Were you present at the sale?

A. I was not present at the sale.

Q. Do you know it from anything (interrupted)——

Mr. TAYLOR: No, it would be hearsay.

Q. Did you ever hear it of the commissioners—Dr. Smith, one of the respondents—did you ever hear him say anything about it?

A. No, sir.

ABRAM VOORHEES, a witness produced on the part of the aforesaid petitioner, having been sworn on his oath according to law, deposeth and saith:

Direct examination by Mr. FORT:

Q. You are the present assessor of the township of Clinton?

A. Yes, sir.

Q. Do you know this property of Mr. Skinkle's, formerly Mr. Headley's?

A. Yes, sir.

Q. At what do you assess that property?

Objected to.

A. This last year it is assessed $1,200.

Q. Now, are you pretty well—do you assess other property in the immediate neighborhood in the township of Clinton?

A. I assess all around it.

Q. Pretty well acquainted with the valuation of property, or not, in that township?

A. Well, I have to be pretty well acquainted.

Q. How long have you been assessor?

A. Six years—six or seven.

18 Q. What, in your judgment, from your knowledge of valuation of real estate in the township of Clinton and village of Irvington, do you consider the value of that piece of property?

Question objected to, as witness has not shown competent knowledge.

A. Its real value would be about $1,500.

Q. Is that valuation based upon a sale at auction, or private sale, for the best price that could be obtained?

A. I think it is all it is worth—all it would fetch at private sale if a man wanted it; it is what I should be willing to give for it if I wanted it.

Cross-examination by Mr. TAYLOR:

Q. What did you assess the property for last year?

A. I forgot; I can tell exactly if you will allow me to look at my note book.

Q. Certainly; if you have got your book here look and see and mention the last six years.

A. In 1881, assessed $1,500; in 1880, assessed $1,200; in 1879, assessed $1,500; in 1878, assessed $1,800; in 1877, assessed $1,800; in 1876, assessed $2,000.

Q. 1875; do you know what?
A. No, sir; I wasn't assessor then.
Q. What is your rule in Clinton township as to valuations for assessments—what is the rule you go by as to the amount you assess the property at as compared with the real value?
A. Well, we have no particular rule to go by; we take a piece of property and assess it—well, very near what I think it would fetch, so as to make myself sure to be below——
Q. Did you assess the property in the township on the same valuations which were furnished by the board of assessors?
A. Yes, sir.
Q. Sure?
A. Yes, sir.
Q. Did you actually assess the property in the township on the same valuation that you gave in to the board of assessors?
19 A. You mean in the sum total?
Q. Yes.
A. Not exactly.
Q. Well, what did you do?

Mr. FORT: We ought not go into that.
Mr. TAYLOR: Oh, yes; to find out.

Q. What valuation did you give in to the board of assessors?
A. When?
Q. The last board.
A. I can't tell.
Q. You don't know. You don't assess on so large a valuation as you give in, do you?
A. I did last; yes, sir.
Q. You did?
A. I did, and I got a deduction.
Q. Well, did you actually assess on a valuation as high as that which was fixed by the board after the reduction?
A. I think it was.
Q. You think you did. Well, now, please answer my question as to the value you put upon the property generally in Clinton township for assessment purposes as compared with its real actual value.
A. Well, I can't answer that exactly, because some pieces of property I assess pretty nearly what I think its value.
Q. You own property in Clinton township?
A. Yes, sir.
Q. Where is yours situated?
A. In Wall street.
Q. What is yours worth?
A. My property?
Q. Yes.
A. I don't put any value on it.
Q. That is what I asked you. What is it worth?
A. I don't want to sell it.
Q. I didn't ask you whether you wanted to sell it. I asked you what it is worth.

20 A. I can't tell what it is worth; only what I assessed it for.

Q. You have been assessor for several years?

A. Yes, sir.

Q. How do you know more about Mr. Skinkle's property than you do about your own, Mr. Voorhees?

A. I supposed it was in the market.

Q. What makes you suppose it is in the market?

A. Because I have understood so. It is for sale.

Q. Who told you?

A. That I can't tell. It is common talk.

Q. Rumor?

A. Yes, sir.

Q. Did you ever hear Mr. Skinkle say what he would sell it for?

A. No, sir.

Q. Well, we will go back to the question as to how it is that you, being assessor at Clinton and having been such for several years past, can tell the value of other people's property and cannot tell the value of your own.

A. Well, do you mean for what it would fetch or do you mean for what I value it at?

Q. I mean just the same as you did when you told the value of Mr. Skinkle's property. Can't you in the same way and on the same principles give the valuation of your own property—what you think it is worth—what you would sell it for or what it is worth?

A. Well, I wouldn't sell it at all.

Q. Perhaps not, but tell me what it is worth.

A. I can tell you what I assessed it for.

Q. Well, you can tell me what it is worth, perhaps. Didn't you assess it for what it is worth?

A. Eh?

Q. Didn't you assess your own property for what it is worth?

A. I assessed it in the same proportion I did my neighbors'.

Q. What proportion did you assess the property at, then? What is the reason you can't answer my question? I have been waiting.

21 A. I can answer that question.

Q. I thought you could.

A. I can tell what it is worth if it was going into the market; probably what it would fetch.

Q. The price of your own property—give the valuation of it in some way; you have attempted to give the valuation of Mr. Skinkle's.

Mr. FORT: What would it bring, that is what he means.

A. What it would bring, or what it is worth?

Q. Well, now, Mr. Witness, what is the value of your own property honestly, now?

A. Well, now, I don't know.

Q. What do you assess it at?

A. I assess it at $3,000.

Q. Would you sell it for six?

A. Yes, sir; quick.
Q. Would you?
A. Yes, sir.
Q. Would you sell it for five?
A. No, I think not.
Q. I suppose you assess your property as high, proportionately, as you did other people?
A. I assessed it exactly as my neighbor right alongside of it.
Q. Then you assessed your own about three-fifths its value?
A. I assessed mine what I think it would fetch.
Q. You say also that you assessed yours proportionately as high as you did other people?
A. I did so; yes, sir.
Q. Now, when you assessed Mr. Skinkle's at $1,700 this year you assessed him no higher proportionately than you assessed yours, did you?
A. I didn't intend to.
Q. Well, then, you must have thought his property was worth as much above the valuation as your own was?
22 A. I think I have got it pretty near that.
Q. Then you assessed it at about three-fifths of what it was worth?
A. A little more than that.
Q. A little more; why did you assess that more than you did your own, then?
A. I can't tell, Mr. Taylor; I can't get everybody to a fraction part of a dollar that has got a piece of property; I try to get it as near as I can.
Q. You assessed him a little higher than you did your own?
A. I don't know that I did.
Q. Very well, then; if you assessed him $1,200 that was three-fifths of what it was worth?
A. Well, I go along by a man's piece of property; I look at it and I think what it is worth; I don't stand to figure up another man's piece of property that lives a mile off.
Q. But you do know what your own property is worth, don't you, as well as anybody else's?
A. I know what it is worth to me.
Q. I didn't ask you that; that is not the way you assess property in Clinton township; what is it worth to each man?
A. No, sir.
Q. What is your principle of valuation there?
A. Well, it varies; sometimes I will take one as a guide and sometimes another; if it is a good rental piece of property I take the rental value of it for a guide.
Q. Why did you assess this property at a valuation of $2,000 years ago?
A. I didn't assess it at $2,000.
Q. $1,800?
A. 1877; yes, sir.
Q. 1876, you said it was assessed for $2,000?

A. It was assessed at that; I didn't assess it, though.
Q. Who was the assessor then?
A. Mr. Wade.
23 Q. Have you been pretty well acquainted with this property for several years?
A. Yes, sir; about thirty years.
Q. Have you got any property assessed by the road board?
A. Mine was assessed by the road board.
Q. Paid the assessment?
A. Yes, sir.
Q. Was it assessed any higher than this?
A. I don't know anything about that. I never paid any attention.
Q. What do you know about the value of real estate in Irvington?
A. What do I know about it?
Q. Yes.
A. No more than anybody else knows about it; only my own judgment. What few sales I have seen around there, I judge, take one with another.
Q. Seen any sales lately?
A. There was the Crawford property was sold two years ago.
Q. Were you present?
A. I was present; yes, sir.
Q. That is not so well situated as this?
A. There is Cooper's property sold a few years ago.
Q. Were you present?
A. No, sir; I know what it brought.
Q. Hasn't property in the last ten years depreciated very much in Irvington the same as anywhere else?
A. Yes, sir.
Q. How much during the last nine or ten years?
A. I don't know how much it has depreciated. It has depreciated considerable.
Q. 50 per cent.?
A. I should think so.

COUNSEL: That is all.

Redirect examination:

Q. How near is this Crawford property to this property?
24 A. It ain't a great ways. It isn't over one-third of a mile if it is that.
Q. What avenue is it on?
A. Springfield avenue.
Q. Just point the Crawford property out on the map.
A. I think there is one lot in a triangle and I think the other was a clear lot.
Q. Who sold that property?
A. Dr. Smith.
Q. Is he one of the commissioners of the Essex Public Road Board now?

A. I really don't know; I believe he is, though.
Q. He is the freeholder from the township of Clinton?
A. Yes, sir.
Q. Do you remember what the property brought at the sale—a lot?
A. I think it was $78; I think it was. Frank Allen bought them, I think, for $78.
Q. $78 for the two lots?
A. For each lot.
Q. How many lots were there?
A. Two. I have got a memorandum of it home, but I have not here, how many there were and what they brought.
Q. Are you sure as to the amount you stated—$78?
A. Yes, sir—that is, subject to the assessment.
Q. I understand you, but are you sure of that?
A. I think I am.
Q. Wasn't it $7 to $9 or $10 a lot?

Mr. TAYLOR: I object to your leading your own witness.

A. I don't remember.

Recross-examination:

Q. $79 a lot. How many lots were there?
A. There were two.
Q. Did they bring as much as you assessed them at—did the property bring as much as you assessed it at?
A. I couldn't tell; I forget; I didn't pay any attention.
25 Q. How do you know how much it brought?
A. Well, because I think I have got the figures for it home. I am not positive about it.
Q. Who gave you the figures?
A. I took them when they were struck off.
Q. You were present at the bids?
A. I was.
Q. Was Dr. Smith a member of the road board at that time?
A. I don't know anything about it. I don't know.
Q. You don't know him, do you?
A. I think I do. I don't know his business at all.
Q. You don't know that he is a doctor, then?
A. Yes, sir; I do; but I don't know what he does out every day. I don't pay any attention to it. He might have been commissioner six years ago, for aught I know.
Q. You confine yourself to the valuation of property in Clinton township, do you not?
A. What is that?
Q. You confine your services *of* valuation of property in Clinton township?
A. I don't confine it to that principally. I have other business to attend to besides that.

COUNSEL: That is all.

ELIAS K. WILLIAMS, a witness produced on the part of the aforesaid petitioner, having been duly sworn on his oath according to law, deposeth and saith:

Direct examination by Judge FORT:

Q. What is your business?
A. Flour and feed business—feed store in Irvington.
Q. How near this Headley property?
A. Right across the street.
Q. How long have you been there?
A. A little over five years.
26 Q. How long have you lived in the township of Clinton?
A. About 48 years.
Q. Been familiar or not with the sales of property in that neighborhood?
A. Well, I know about all the property that has been sold around there. I haven't paid much attention to it. I ain't in that business.
Q. But you know when property is sold?
A. Generally hear of it.
Q. Can you form any idea as to the value, in your judgment, reasonable and certain, of the property in question here on the corner, at the point of Springfield and Clinton avenues?

Mr. TAYLOR: I object to the value unless he shows some acquaintance as an expert.

A. Property is held very low in Irvington at present. There appears to be no sale for property. An objection made to the sales of property is that there is no way of getting back and forth. You can't sell property in Irvington at hardly any price.
Q. Does the assessments of the road board have anything to do with your not being able to sell your property?
A. Not that I know of.
Q. Now, you go on with the valuation.

Objected to.

By Mr. TAYLOR:

Q. You don't claim to be an expert?
A. No, sir. I do not.

Objected to.

WITNESS: If I was in the business, dealing, I wouldn't want to give $1,500 for it, judging by other property in Irvington.

Cross-examination by Mr. TAYLOR:

Q. Do you know of any property you would want to give $1,500 for?
A. I would give $1,500 for Sheriff Peckwell's property.
27 Q. Do you think his worth that?
A. I would take the chances there.
Q. Do you own real estate in Irvington?
A. Yes, sir.

Q. How long have you owned it?

A. Well, I have owned real estate in Irvington, I guess, in the neighborhood of twenty years.

Q. Right opposite this?

A. No, sir.

Q. You don't own the property where you do business?

A. No, sir.

Q. Who does?

A. The Clinton Lodge, Odd Fellows, No. 18.

Q. Where is your property?

A. On Union avenue, about 400 yards from this.

Q. What is it worth?

A. Well, it is not worth a great deal to-day; perhaps it might bring $2,000.

Q. Would you sell it for that?

A. I don't want to sell it.

Q. That is the usual answer. How much was it assessed at this year?

A. I don't recollect; Mr. Voorhees is here; $1,200, I think; I think it was assessed for $1,200.

Q. You have never been in the real-estate business?

A. No, sir.

Q. Never sold any property?

A. Yes, sir; sold one house in Irvington.

Q. How long ago?

A. I think it was in 1863.

Q. What is the trouble in Irvington that causes property to depreciate so?

A. They generally call it a one-horse town; no way to get back and forth.

Q. Horse cars there?

A. The great difficulty, I believe, is in getting back and forth; it takes too long.

Q. The difficulty is its being two or three miles from Newark.

28 A. It takes too long to get there.

Q. Horse cars run right by these premises, do they not?

A. Yes, sir.

Q. Pretty good line?

A. Yes, sir.

Q. How frequent communication?

A. I think the cars run about every fourteen minutes.

Q. Well, property has been higher there, hasn't it?

A. Yes, sir.

Q. What percentage, on the whole, take the village of Irvington?

A. Well, I don't know as I can tell you, Mr. Taylor. I know property has been higher than it is now.

COUNSEL: That is all.

JOSEPH C. WHITAKER, a witness produced on the part of the aforesaid petitioner, having been duly sworn on his oath according to law, deposeth and saith:

Direct examination by Judge FORT:

Q. What is your business?
A. Real estate, insurance, and so on—general agent.
Q. How long have you been in Irvington?
A. Twenty-five years.
Q. Carried on that business during that time?
A. No, sir.
Q. Part of the time?
A. Part of the time.
Q. How much of the time?
A. Five years.
Q. Last past?
A. Yes, sir.
Q. Do you own any real estate in the neighborhood?
A. Yes, sir.
Q. Are you acquainted with this property of Mr. Skinkle's, formerly Mr. Headley's?
29 A. Yes, sir.
Q. From your knowledge of real estate, as well as of the valuations in that neighborhood, what valuation would you put on this property?
A. Fifteen hundred dollars is the valuation I put on it at the present time; not the valuation I put on it, but what I would be willing to give for it.
Q. Do you know of sales of property in the immediate neighborhood?
A. No, sir; there has not been any sales in the immediate neighborhood that would have any bearing on that at all; there was some outside.
Q. How far outside?
A. I sold some on Linden avenue, a quarter of a mile from there—less than that; sold some on Union avenue.
Q. Dimensions anywhere near the size of this property—as much of it as of this property?
A. More, some places.
Q. As to the proportionate value, can you estimate on those properties and this, considering locations?
A. It wouldn't have any bearing in the case, sir; it is outside property; it is very differently situated; it doesn't have anything to do with this case at all.

Cross-examination by Mr. TAYLOR:

Q. Would you be willing to pay $1,500 for this property?
A. Yes, sir.
Q. Willing to pay more if it wasn't for the assessments on it, wouldn't you?
A. No, sir; I wouldn't do that.

Q. You say $1,500 is not your valuation, but what you would give for it?

A. Yes, sir.

Q. It is worth more, isn't it?

A. I don't know that it is worth any more. If I didn't think it was worth that I wouldn't be willing to give that for it.

30 Q. You wouldn't care about buying it if that was all it was worth?

A. You had better put that the other way. If I owned it what would I sell it for; would I sell it for $1,500.

Q. Well, you said that was not your valuation. Now, I want your valuation; not what you would be willing to pay for it.

A. That is my valuation.

Q. You would be willing to pay $500 for it?

A. I would be willing to give $1,500 for it.

Q. Now, as a real-estate agent, you are not willing to give any more than that property is worth?

A. No, sir.

Q. When you say you will give $1,500 you say that is not your valuation. I ask you to say what is your valuation, as near as you can fix it.

A. That is my valuation to-day.

Q. What will it be to-morrow?

A. I couldn't tell.

Q. What was it yesterday?

A. The same as it has been for the last six months.

Q. Hasn't it, during the five years last past, been worth more?

A. There was a time, I suppose, when it was worth a little more—when the other building was on the premises.

Q. What building?

A. The one that Mr. Skinkle moved from there.

Q. What was it, frame?

A. Frame building.

Q. What kind of a building?

A. Story and a half.

Q. Did he move it off?

A. Yes, sir.

Q. Where did he put it?

A. Quarter of a mile nearer Newark, on Springfield avenue; a building probably worth $200.

Q. Worth $200 on or off the place?

31 A. Worth $200 anywhere; worth $200 on the street, I think.

Q. Worth more when it is in its place?

A. It cost something to get it in its place.

Q. Now, you are a real-estate agent, and you say you are familiar with the value around there. I am not quite satisfied that you have told me what your valuation of this property is. You said $1,500 was not your valuation—what you valued it at. Now, I want to know what you do value it at if you don't value it at that sum.

A. I am not understood. $1,500 is what I would give for the property.

Q. I understand that thoroughly.

A. I can't go any further than that.

Q. You said that was not your valuation. You said this when you were asked the value. You said $1,500 was not the valuation you put on it, but it was what you would be willing to give.

A. Yes, sir.

Q. You said what your valuation was not.

A. That is my valuation.

Q. You said it was not. Now, if that is not the valuation you put on it, what is the valuation you put on it?

A. I couldn't change my opinion a dollar. I couldn't say anything else.

Q. You said that was not the valuation.

A. If I said that (interrupted)——

Q. Now, we expect real-estate agents to give valuations.

A. A slip of the tongue is no fault of mine.

Q. You mean to say, after all, it is your valuation?

A. Yes, sir.

Q. You would be willing to pay $1,500?

A. Yes, sir; that is all I can say on that point.

Q. Are you willing to pay in Irvington for any property all it is worth?

A. Well, as a general thing, we don't propose to do that.

Q. So I thought. Then when you say you would pay
32 $1,500 your idea is that you would make something by buying it?

A. Yes, sir; I do.

Q. Then it is worth a little more, isn't it?

A. There would be an equity there of $100 yet.

Q. Then you think it would be worth $1,500?

A. Perhaps so, if you could catch a man that wanted it real bad.

Q. You wouldn't want to hold property of that kind very long to make $100?

A. One hundred dollars is a good deal nowadays, Judge.

Q. Oh, yes. So is $500. Any assessments against your property in favor of the road board?

A. My own personal property?

Q. Yes.

A. No, sir.

Redirect examination:

Q. In your estimate of what you would be willing to give for it you mean free and clear of all incumbrances or subject to the road board?

A. No, sir; want everything cleaned up.

Q. If the road-board assessments of various kinds and taxes against the property amounted to $3,500, how much would you be willing to give for it, subject to those assessments?

A. $3,500?
Q. Yes.
A. It was simply a mistake of the commission when they made the award to Mr. Headley for damages that the property received from the widening of Springfield avenue. It was not worth—it never was worth—what the commissioners put on it in the first place. Previous to the opening of Springfield avenue I could have went to Mr. Headley and bought the property for $5,000. They came on and awarded Mr. Headley $6,500 for damages the property sustained, leaving a balance of it, and then turned around and assessed the piece (interrupted)——

33 Mr. TAYLOR: Counsel for the road board objects to the voluntary statement of the witness of what to him is simply hearsay, and which can be properly provable by public documents.

Q. After the buildings that were on the property prior to the condemnation for widening were taken off and sold by the road board what was the value of the land left there without any buildings on it at the time the assessment for benefits in 1873 was laid on this property—the value of that land without any buildings on it?

Mr. TAYLOR: He says he knew nothing about it.
Mr. FORT: He has lived there for thirty-odd years.

A. As you are aware, everybody was crazy at the time.
Q. Even at that inflated valuation at the time, I want to know just the amount it is worth without any buildings.
A. They had people worked up to that pitch, I suppose, they would have bought at almost anything. I suppose he could have got as much again as he received from the road board for the balance of it at that time.
Q. How much was that?
A. $6,500.
Q. For the piece of land?
A. I think likely they could have got it at that time.
Q. I am only asking you as to what the property was worth at that time in the light of events. I ask you now what that property was worth at that time in the light of subsequent events.

Objected to as being an unfair test and somewhat incongruous.

A. The commission that was appointed to the business were governed (interrupted)——

Objected to.

Q. Were you one of the commissioners?
A. No, sir; the commissions were done at my house and I knew a good deal of it. They stayed with me.
34 Q. The commissioners did?
A. Yes, sir; the business was done right in my room.
Q. This particular assessment?
A. Yes, sir; the whole of it from the commencement to the end

was done at my house, and I do know that they were governed (interrupted)——

Mr. TAYLOR: I object to the witness volunteering evidence that is utterly irrelevant and, besides, incompetent, because what the commissioners did is no evidence here.

ISAAC O. WADE, a witness produced on the part of the aforesaid petitioner, having been duly sworn on his oath according to law, deposeth and saith:

Direct examination by Judge FORT:

Q. Where do you live, Mr. Wade?
A. Irvington.
Q. How long have you resided there?
A. Well, it is within a few days of 40 years—all my lifetime.
Q. What is your business?
A. I am a carpenter and builder.
Q. Acquainted with the valuation, of course, of buildings and real estate, are you, in that town?
A. Well, yes, I suppose, to some extent.
Q. Do you know this property that is known as the Headley property, now Mr. Skinkle's property?
A. I do.
Q. From your knowledge of real estate could you give any valuation on that property?
A. Well, only by comparing it with sales that have taken place recently.
Q. That you have known of personally?
A. That I have known of personally.
Q. Have you been present at any sales that have taken place recently?
35 A. Party has told me that they had bought property right opposite.
Q. There have been sales which have come to your knowledge in the neighborhood recently?
A. Yes, sir.
Q. What is your judgment as to the value of this property?
A. I should value the property in the neighborhood of $1,500.
Q. What do you mean by in the neighborhood?
A. I mean $1,500; some man might be willing to give $1,600; some man not over $1,400. I don't think it would be worth over $1,500.

Cross-examination by Mr. TAYLOR:

Q. What is the condition of the property as compared to the property in 1876?
A. In 1876 there was a little building about 18 by 24 or 26 on it; that is not there now.
Q. What was that worth?
A. Drake had a lease on the property; I built it. I should suppose that building at the time Drake put it there—he had a lease

on it—I should think it was worth, perhaps—well, I should say $400 to put it there when it was built.

Q. Did it belong to the owner?

A. No; it didn't belong to the property.

Q. Then it was not assessed with the property?

A. I am unable to say that.

Q. You have been assessor, have you not?

A. Yes, sir.

Q. You were assessor in 1876?

A. Yes, sir.

Q. Did you assess this building on it as a part of the property?

A. I suppose I did; I am unable to determine.

Q. When you were acting as assessor you endeavored to assess the property to the owner?

A. Yes, sir; I don't suppose that I assessed the building
36 to Mr. Drake; I don't suppose that I did; I didn't know at the time he owned it.

Q. Did you take the building into account?

A. I did—the property just as I saw it.

Q. Otherwise, how is the condition of the property as compared with the property in 1876?

A. You mean in regard to value?

Q. No; the condition of it.

A. The condition of it is—the condition of the property?

Q. There has been no change?

A. There has been no change. It is in as good condition in regard to wear and tear as it was in 1876, I should suppose.

Q. Is the property worth as much now as it was in 1876?

A. I don't think it is.

Q. Why not?

A. Do you want my reason for it?

Q. That is what I asked you.

A. My reason is that property is tied up so excessively with an Essex Public Road Board that there is no sale for it.

Q. Well, now, if the property wasn't tied up by the Essex Public Road Board what would you think it would be worth, honestly?

A. If there were no assessments against it I think it would be worth about $1,500.

Q. Isn't it worth just as much with the assessments against it?

A. Not if the purchaser has got to pay the assessment and $1,500.

Q. If he buys it subject to the assessments, then you think you would hardly be willing to pay $1,500?

A. I wouldn't give a dollar for it—I mean, understand me, if I had to pay the assessments.

Q. Can you please tell me how the fact that the property is incumbered by the assessment affects the real value of the property itself?

37 A. From the fact that it could not be utilized and improved.

Q. How does the assessment prevent it?

A. Certainly no one will buy it. No one will buy it with an ex-

cessive assessment on it or an assessment against property for more than it is worth.

Q. If you get a clear title to property, whether it is assessed or not, it doesn't make any difference if there has been assessments on it?

A. It leaves a cloud upon the title.

Q. After the assessment is paid?

A. Not after the assessment is paid.

Q. But suppose there is an assessment of $1,200 on a property worth that. Now, in giving a valuation you wouldn't be embarrassed at all, would you, in coming to a conclusion because there was an assessment on it?

A. I don't know that I understand your question.

Q. In giving the valuation of this property at $1,500 you have taken into account the assessment, haven't you, which ties it up, to use your words?

A. No, sir; I have not. I mean fifteen hundred dollars if it was free from assessment.

Q. Now, explain how it is that the fact that there are assessments on other property there in favor of the Essex Public Road Board interferes with the valuation of it more than it does with this.

A. That I certainly can't explain any more than it is a positive fact.

Q. Have you got any property tied up by an assessment?

A. I have, unfortunately, sir.

Q. And that worth how much?

A. Well, I will tell you how much. Two lots——

Q. Elsewhere—where are they situated?

A. On Springfield avenue, adjoining the property of Crawford.

Q. Right near by Crawford's?

A. Yes, sir.

Q. How much are the assessments against your property, with the interest and expenses?

38 A. I declare I don't know, Mr. Taylor. I can't tell exactly, but two years ago last October it was four hundred and forty-five dollars; and if the road board would throw off the assessment and give me a receipt for it I would take four hundred dollars for the two lots.

Q. Maybe you would.

A. I would, positively—that is, the assessments are more than the property is worth.

Q. Is this improved property that you speak of?

A. No, sir.

Q. Vacant lots?

A. Two vacant lots, fifty feet by seventy-nine feet deep.

Q. People generally got disgusted with real estate in Irvington.

A. I am aware of it.

Q. Is that a fact?

A. That is where the road board is safe.

Q. You expect to come in and get your assessment arbitrated if this is successful?

A. I am undetermined with regard to that. I think of leaving those two lots. The Essex Public Road Board bought it. It has got to come back in fifty years, and I had thought of leaving it for my heirs to keep my cemetery lot in condition.

Q. You thought of leaving it and coming back again in fifty years and resuming it?

A. This is the way I expected to do: It will be worth something some day, no doubt. It will keep my burying ground in condition, but certainly I shall never pay it.

Q. Was this property you speak of a burying ground—devoted to it?

A. That I am assessed for?

Q. That you are complaining of.

A. Oh, no.

Q. I thought you spoke of (interrupted)——

A. I say that I expect that lot to come back in fifty years, and at that time I expect that the proceeds will keep my burying ground in condition.

39 Q. Your burying ground is another piece of property?

A. Yes, sir.

Q. The road board hasn't got any assessment on that?

A. No, sir. That was bought a good many years ago.

Q. You assessed this property in 1876, didn't you?

A. I did; yes, sir.

Q. You remember the valuation you put on it then?

A. I am not positive, Mr. Taylor, but I think I valued it at $2,000.

Q. You assessed it for several years previous?

A. Yes, sir.

Q. What did you value it at in 1873?

A. I am not able to say positively.

Q. Try and recollect.

A. I should think about $2,000.

Q. Not more?

A. 1873, that was after the property was cut through; the highest, I think, that I ever valued the property was $3,000.

Q. When was that?

A. That was from 1862 until 1876, which is about fifteen years. I assessed the property for twelve years, and the highest that I ever valued the property was $3,000.

Q. Do you remember what year that was?

A. I assessed the property for $3,000, I think—I possibly may be mistaken—from 1869 until the road board cut through.

Q. What was your rule in assessing property—assess it clear up to its full value?

A. My rule was—I never thought property was worth as much (interrupted)——

Q. I didn't ask you that, I asked you what your rule was in assessing property—whether you assessed it up to its full value.

A. What I considered it would bring, that was my rule; not what a man asked for his property, what I thought it would bring.

40 Q. At a fair sale?
A. Yes, sir.
Q. Where a party wanted to sell and another wanted to buy?
A. Yes, sir.
Q. Then you mean to say you assessed it at its full value?
A. That was my idea.
Q. That was the case with your own, too?
A. Of course.
Q. Is your property situated near this?
A. Well, it is within a few hundred feet; it is on Union avenue, my property is.
Q. What did you assess these lots for in 1876 that you speak of belonging to you—tied up by the road-board assessment?
A. I think I assessed the two lots at $100. I think I did.
Q. They were worth more?
A. No, sir; not with the road board——
Q. Then they have increased in value, haven't they?
A. Oh, no.
Q. Have you ever put up those lots for sale?
A. No, sir.
Q. Advertised them?
A. No, sir.
Q. What will you sell those lots for now?
A. And give a clean title for them independent of the road board?
Q. No; subject to the road-board assessment. What would you give a quitclaim deed for?
A. I don't know.
Q. No. What would you give a quitclaim deed for? Maybe we will make a market.
A. Well, I want money pretty bad; if I thought you were a buyer I would soon talk to you. They cost me $360.
Q. You assessed them at $100?
A. Hold on—they cost me $360; the road board paid me
41 $125—I think that was it. I wouldn't be positive whether it was $125 or $150. They took off 21 feet off the rear; they were 100 feet deep, that left them 79 feet; and then for benefits, together with accumulated interest, amounted to $450.
Q. What did they award you for damages?
A. $125 or $150.
Q. How much did they take?
A. They took 21 feet off the front of the lot, making it 79 feet deep.
Q. They were about 100 before?
A. They were 100.
Q. And they awarded you how much, did you say?
A. $150. I asked $500 for them before the road board came through.
Q. When was that—1873?
A. I am not positive.
Q. You mean $500 apiece?
A. No; $500 for the two.

Q. They were assessed for $100 apiece?
A. No; I never assessed them at $100.
Q. Didn't you say you assessed them at $100?
A. I assessed them at $100 in 1876. That was after they had been sold. They were sold in 1874.
Q. The values of those lots at the time you were assessor? That is what I am after.
A. Before or after?
Q. Well, about the time the road board began to come through there?
A. After the assessment—well, a vacant lot there 25 by——
Q. These same lots. I ask you what you assessed these lots at when you were assessor.
A. About $150.
Q. Apiece?
A. $150 apiece.
Q. And you asked how much for them?
A. I asked $500. I would have taken——
Q. I don't ask you that now.
A. I never asked anything then.
42 Q. You didn't?
A. No.
Q. You valued them at $500?
A. I would take $500.
Q. You value them at $500. Let's know what you mean.
A. Certainly, I would have sold them.
Q. I am not asking about that. I ask you simply, in the phraseology you employ as assessor, what you assessed them at in 1876, for instance.
A. I would answer that question——
Q. You can answer that easily.
A. I say $100.
Q. Apiece or both of them?
A. $100 apiece.
Q. You valued them at about $500?
A. No; I didn't. You don't understand me.
Q. I hope to understand you.
A. I assessed my interest in that lot—what I considered my interest—at the very highest point, $100.
Q. What do you mean by interest?
A. Over and above the road board, sir.
Q. Over and above the claim of the road board?
A. Yes, sir; I have got to recognize that.
Q. Now, what did you assess them at in 1872?
A. About $300.
Q. Sure?
A. I am not sure. It is a matter that I have not thought over. The record will show that, I suppose.
Q. Don't you remember that as well as what took place in 1876?
A. No; from this fact, Mr. Taylor——
Q. I don't care about the reason. I am content if you don't know.

A. I wish to give a correct answer. In 1874 they were sold.

Q. By the road board?

A. By the road board. I think it was 1874. Of course,
43 they were not worth as much to me then as they were when there was no road-board assessment on them. I hadn't that equity in them.

Q. Why not?

A. If you don't know I can't inform you.

Q. Did you assess other people on that basis that had assessments on their property?

A. I did.

Q. What did you assess Skinkle's property in that same year at?

A. I am unable to say.

Q. Tell as near as you can.

A. I can't tell.

Q. Did you assess it for anything?

A. Yes, sir; assessed every piece of property.

Q. You assessed it for two thousand dollars in 1876, I believe?

A. Mr. Skinkle's?

Q. Yes.

A. I assessed that at two thousand dollars.

Q. Why did you assess that on a different principle from what you did yours?

A. Because I was acquainted with the facts in my case.

Q. You didn't suppose the property right along the line of the avenue was assessed at all?

A. I didn't suppose anything about it. I wasn't acquainted with the facts.

Q. Didn't you know that there had been assessments all along the line of the property?

A. I didn't know but what they had been paid.

Q. Suppose you had paid your assessments?

A. Why, then, my equity would be in the lots their full value.

Q. Now, I suppose you knew there were other assessments made beside your own in 1876?

A. Certainly; I suppose I did. Yes, sir; of course, by common rumor.

Q. And I suppose you were conscious to your duty as assessor not to assess a man too much?

A. Yes, sir; I wouldn't like——

44 Q. When you took into account, in 1876, the assessment on your property and assessed it at $150 a lot——

A. No; I didn't assess it at $150 in 1876—$100.

Q. When you assessed it at only $100, why didn't you take into account Skinkle's property and the other property on the line of the avenue by making an allowance for assessments on their property?

A. I couldn't give any excuse for any delinquency that I was guilty of as assessor at this late day.

Q. Didn't you know that it was your duty to assess property—to value it for assessment purposes—independent of any assessment?

A. I thought I understood my duty.

Q. Well, you know it was not your duty to make any deduction in valuation on account of assessment, didn't you?

A. No, I didn't. I assessed it for what the property was worth—the man's right and title in it.

Q. Then you considered it worth $100 over and above the assessment, then?

A. I can't say that I did.

Q. Please explain why.

A. I have explained. I have told you why.

Q. I don't want anything but fact.

Redirect examination:

Q. You have known that property for quite some time?

A. Yes, sir.

Q. Now, with reference to the buildings that were on that property when the road board went through, how many buildings were removed from it by the road board?

A. There was part of a stone building.

Q. Here is a map. Just look at this map. At the time the road board widened Springfield avenue were there any buildings on the Headley property except those fronting on the then turnpike?

A. I don't think there were.

45 Q. On Springfield avenue?

A. I see.

Q. Fronting in on Springfield avenue?

A. No, sir.

JAMES M. TICHENOR, a witness produced on the part of the aforesaid petitioner, having been duly sworn on his oath according to law, deposeth and saith:

Direct examination by Mr. FORT:

Q. Are you acquainted with this Headley property?

A. Yes, sir; I am.

Q. How long have you known it?

A. Most all my lifetime—60 years.

Q. Do you know of any sale, transfer of property, in the neighborhood?

A. I know of what has been sold.

Q. Do you own property in this immediate neighborhood?

A. I own property within 600 or 700 feet of it.

Q. What is your judgment of the value of this piece of property, Mr. Tichenor?

A. My valuation is not exceeding $1,500.

Q. You mean with the building as now on it?

A. Just as it is now, at present.

Cross-examination by Mr. TAYLOR:

Q. Why do you put it at only $1,500, Mr. Tichenor?

A. That is the value that I have heard other property held at around it.

Q. Other property just like it?
A. Similar; not just like it.
Q. What other property is valued at that?
A. Property across the street has been held some time for sale.
Q. Are you in the real-estate business?
A. No, sir.
Q. You haven't bought or sold?
46 A. I haven't bought anything, only what I have.
Q. Your knowledge of the value of property across the street is derived——
A. From what I have heard said they held the property at.
Q. The talk?
A. Yes, sir; I have understood; it is only talk.
Q. They hold the property down in Irvington, don't they?
A. Property is a great deal lower than it was when we were all wild.

Redirect examination:

Q. Do you remember the buildings that were on that property at the time the road board came through?
A. Yes, sir.
Q. Which were the more valuable—the buildings then or the buildings now?
A. They were a great deal more valuable then than they are now, because there was a large double-story house.
Q. There has been a building referred to as having been taken off for Mr. Drake. Even when that building was on the property were the buildings on the property then as valuable as they were previous?
A. No, sir.

COUNSEL: That is all.

ELIAS W. DURAND, a witness produced on the part of the aforesaid petitioner, having been duly sworn on his oath according to law, deposeth and saith:

Direct examination by Judge FORT:

Q. You live in Clinton township, Mr. Durand?
A. Yes, sir.
Q. Irvington village?
A. Yes, sir.
47 Q. Own property there?
A. Yes, sir.
Q. How long have you been resident there?
A. Nearly all my lifetime—since I was eleven years old.
Q. About how many years?
A. About forty-odd years.
Q. Have you known of the sales or transfers of property in the neighborhood of this property?
A. Yes, sir.

Q. About what, in your judgment, is the value of the property in question?

A. As it is at present?

Q. Yes.

A. It might be five cents.

Q. The value of that property—the actual value and not subject to the assessments, but the actual value of the property?

A. I place it at $1,200.

Q. Did you know this property before the road board went through?

A. Yes, sir.

Q. Widening Springfield avenue?

A. Yes, sir.

Q. Do you remember the buildings that were on the property?

A. Yes, sir.

Q. And condemned by the road board?

A. I do.

Q. The difference in the value of the buildings that they sold and the buildings now on the property—which was worth the most?

A. The buildings, decidedly.

Q. The buildings that were sold?

A. Yes, sir.

Q. Do you know whether that which is now on the property is one of the buildings that was formerly upon the property moved back?

A. That I can't tell.

48 Cross-examination by Mr. TAYLOR:

Q. What sales have you personal knowledge of, Mr. Durand, in Irvington recently?

A. The Cooper estate, more particularly.

Q. When?

A. I don't remember the exact date. It was within two or three years, I believe.

Q. What sort of a tract of land was it?

A. I don't exactly understand your question.

Q. You say the Cooper estate. I can't understand from that what the nature of the property is that you refer to.

A. The homestead—farming lands fronting on two streets.

Q. How far from this property of Mr. Skinkle's?

A. About a quarter of a mile.

Q. On what street does it front?

A. Fronting on Stuyvesant avenue, as it is called, on one side and the old road—I can't remember the name of it.

Q. What other property?

A. None that I have tended the sales.

Q. Did you say when this Cooper-estate sale was made?

A. I can't remember the dates. It was within a few years.

Q. Well, three or four or five?

A. Well, three or four or five years—within that time.

Q. You have been assessed, too, haven't you, by this road board?
A. Yes, sir.
Q. You have paid the assessment?
A. No, sir.
Q. How much is yours?
A. I can't tell what it amounts to.
Q. About how much?
A. In the neighborhood of $2,000.
Q. I suppose you will avail yourself of the law if this is successful and endeavor to get your assessment?
49 A. I have not determined the thing yet.
Q. You are waiting?
A. Yes, sir; I am waiting.
Q. You haven't sold or bought property recently?
A. I have not.
Q. Why did you put the valuation down as low as $1,200 when this real-estate agent is willing to pay $1,500?
A. He is the only man that I have ever heard say that; I should judge that it is really worth—I would give $1,200 for it.
Q. What do you mean by "really worth?"
A. What anybody would be willing to pay for it.
Q. There is a man willing to pay $1,500—a real-estate agent, too; I should think if he would give $1,500 for it, it would be worth that?
A. I don't think any one would give $1,500 for it.

FREDERICK HEDDEN, a witness produced on the part of the aforesaid petitioner, having been duly sworn on his oath according to law, deposeth and saith:

Direct examination by Judge FORT:

Q. You reside in Irvington?
A. Yes, sir.
Q. How long have you lived there?
A. Well, I was born in Irvington; I have lived out of Irvington about five years in my lifetime.
Q. Are you acquainted with this property?
A. Yes, sir.
Q. Know where it lies?
A. Yes, sir.
Q. Do you remember when the road board went through there widening the avenue?
A. Yes, sir.
50 Q. Do you know anything of the buildings that were upon the property prior to the opening of the road board, and widening?
A. Yes, sir.
Q. To which street were they adjacent?
A. Springfield avenue, I should say.
Q. Do you know what the buildings are on the property now; what have been on since that time?

A. Yes, sir.

Q. Do you remember the little building that was on the property when Mr. Drake was there tenant?

A. Yes, sir.

Q. Which buildings were of the most value—at the time the road board went through or those since?

A. Most when the road board went through.

Q. The value of that property, Mr. Hedden, what is it now?

A. About $1,200 or $1,300, I should say.

Q. Now?

A. Yes, sir.

Cross-examination by Mr. TAYLOR:

Q. Why do you say $1,200 or $1,300 when there is a real-estate agent here that is ready to give $1,500?

A. The reason I say it was because I bought a place myself; I didn't give that.

Q. When did you buy it?

A. Two years ago; I didn't give that much, and I would rather have my place, or as soon have it, than that.

Q. I suppose you have reason to believe yours is better. Are you acquainted with the value of the property from having made sales yourself?

A. No, sir.

Q. Or dealt in real estate?

A. No, sir.

Q. What is your business?

A. I am in the butcher business.

Q. You haven't, in following that line of business, become acquainted with the value of real estate?

A. No, sir.

51 Q. You would defer, then, to the judgment of a real-estate agent who has been in the business these five or six years, wouldn't you?

A. I should say so only on the ground that I bought property there, and I consider it worth fully as much and I didn't give that for it.

Q. Have you been assessed?

A. I have bought the property since—I have got title.

Q. Have you been assessed, I say?

A. Yes, sir.

Q. Where is your property?

A. It is only a little way from Mr. Skinkle's, on Union avenue.

Q. What is your property assessed at?

A. Well, I don't know as I can say; I think nine or ten hundred dollars.

Q. How distant is your property from this of Mr. Skinkle's?

A. Three hundred or four hundred feet.

Q. Is it on Springfield avenue?

A. No, sir; it is on Union avenue; right off of Springfield avenue.

Q. Is it a dwelling-house or is it a place of business?

A. Dwelling-house.

Q. You would prefer to have a dwelling-house a little off from Springfield avenue, wouldn't you?

A. Well, I bought it because the house—the house is quite deep—the house stands in back. I thought, maybe, some time I could put a market place in front of it.

Q. That is one of the grounds of preference of your property over this, isn't it?

A. Yes, sir.

Q. You would prefer this for purely business purposes, wouldn't you—butcher's business, for instance?

A. It would be according to what it could be bought for.

Q. It is well located?

A. Yes, sir; to catch the dust off of the Telford.

Q. You don't mind that?

A. I do; I don't like to clean up so often. I am on the avenue now and I don't like it much.

Adjourned to Thursday, December 21st.

52 THURSDAY, *Dec.* 21, 1882.

TIMOTHY W. LORD, a witness produced on the part of the aforesaid petitioner, having been duly sworn on his oath according to law, deposeth and saith:

Direct examination by Mr. FORT:

Q. You were originally one of the commissioners of the Essex Public Road Board?

A. I was not one of the original commissioners.

Q. At what time were you commissioner?

A. I was commissioner in 1869.

Q. Just look at this map, Exhibit "1," for the petitioner, and tell me with reference to this signature—is that your signature?

A. Yes, sir; I believe it is.

Q. Have you seen the other commissioners write?

A. Yes, sir.

Q. Do you believe that to be their writing?

A. Yes, sir.

Mr. TAYLOR: We admit that to be the official map.

Q. Is this the original map filed in the register's office?

A. Yes, sir.

Q. For the widening of Springfield avenue?

A. I presume so; the map so states. I don't know of any other map having been filed but this; it was filed August 7, 1869. I presume it is the original.

Q. Do you know who made this map?

A. My impression is that Mr. Owens made it.

Q. Surveyor?

A. Surveyor for the road board at that time. I don't know but

his name may be on it somewhere. I haven't much doubt that he made it, as he was engineer.

Q. Do you know whether the buildings were sold off of this Headley property or not by the road board at the time of the widening?

A. That I am not able to say. It is so long ago I have forgotten whether the road board sold them or whether they allowed Mr. Headley to take them or move them away, or what.

53 Q. Do you know this, as to whether the widening destroyed all the buildings on the property?

A. I don't know any such thing. I don't know that the widening destroyed the buildings; the buildings had to be moved.

Q. That is what I mean to say.

A. My impression now is that one of the buildings was cut off and left standing—a portion of it; that is my impression now. As I said before, it has been some time ago; it has gone out of my mind.

Q. Can you tell by that map anything with reference to which is the line that shows the widening and which line shows the old street?

A. I should think this line here.

Q. That is the broad, brown line?

A. Is the line of the old street. My impression is that this inner line here, between the outside line and the centre line, is the line of the old avenue, as we found it.

Q. And where is the line to which it was widened?

A. It was widened, I think, to the outside line there—that small, red line on this side—and went along and took these buildings here (indicating).

Q. What did you say with reference to the buildings through which the red line runs?

A. I said I couldn't tell what disposition was made of them, but my impression is that one or more of these buildings were cut off and the balance left standing.

Q. Well, then, as a general thing, from this map, did the commissioners either cut off or require to be moved (interrupted)——

Objected to.

Q. What did the commissioners require with reference to all buildings that were within the lines of the street, as widened, and what was done with them?

Question objected to as calling for what ought to be proved simply by the records or minutes.

54 A. That was a matter as regards the amount of damages, and all that sort of thing was left to the commissioners appointed by the court, which we had nothing to do with.

Q. Did the road board widen the avenue in accordance with the outside line on this map?

Objected to.

A. My impression is it did.

Q. With reference to buildings that were within the lines of the road as widened by the road board, were they allowed to remain within that line, or what was done with them?

Objected to as calling for official actions of the board, which would appear by the minutes.

A. I have no doubt but all obstructions within the lines of the avenue, as we laid it, were removed in some way or other. Now, just exactly how that was done I don't mean to say at this time.

SAMUEL MORROW, a witness produced on the part of the aforesaid petitioner, having been duly sworn on his oath according to law, deposeth and saith:

Direct examination by Judge FORT:

Q. You have resided in Irvington for a number of years?
A. Yes, sir; eleven years.
Q. And were you there at the time the Essex Public Road Board widened in 1873?
A. I think not. I think I went there the same year, or 1872 I went there.
Q. Do you know the property that was owned by Caleb B. Headley?
A. Very well.
Q. Where is that situated?
A. It is situated on the corner of Springfield avenue and what is known as Clinton avenue east—Clinton avenue.
55 Q. At the junction or point of the two avenues?
A. Yes, sir.
Q. Do you know of the general value of property in that neighborhood?
A. Yes, sir.
Q. From sales?
A. Yes, sir.
Q. What is your business?
A. I am a lawyer.
Q. Have you ever drawn any sales or conveyances of property in that neighborhood lately or within the last two or three years?
A. Only one or two, and that in other parts of the town; not immediately there.

Question objected to as irrelevant.

Q. From your knowledge and information, what, in your judgment, is the value of that piece of property?

Question objected to, as the witness has not shown himself an expert.

A. $1,000 or $1,200; I should think $1,200 was a good price for it.
Q. How near this property have you resided for the past eleven years?
A. Four hundred feet.

Q. Do you know where the school property, lately purchased by the town or township authorities, is situated there in Irvington?

A. The old brick academy property, do you mean?

Q. Lately purchased by Mr. Peckwell.

A. Mr. Peckwell didn't purchase it; you mean the brick schoolhouse?

Q. Next to it—the piece of property that has just been sold?

A. I don't know anything about it.

Q. You know where it is?

A. Yes, sir.

Q. How near is that to this property?

A. It must be 600 or 700 feet, if not more.

56 Cross-examination by Mr. TAYLOR:

Q. You moved to Irvington in 1872, I think you said?

A. I think it was; yes, sir.

Q. Had the improvement been begun when you moved to Irvington?

A. Yes, sir.

Q. Property during the last ten years has depreciated somewhat in Irvington, has it not?

A. Yes, sir; very much.

Q. What percentage, generally?

A. Well, my estimation is that about one-third of what it was ten years ago.

Q. What would you say was the value of this property at the time of the assessment, as it is situated now?

A. I don't think that that property was ever worth over $1,800; I have never seen the day anyway I would have given over $1,800 for it; I don't think it has fallen in value as much as other property, because I don't think it is a piece of property that attaches any very great value.

Q. Can you, from your knowledge as an expert, account for the depreciation which you say has happened there to real estate and show why the depreciation would not affect this piece as much as any other?

A. Well, that can easily be reached; a good part of the property in and about Irvington is adapted for building purposes, and, as such, had a market value; we had the town at one time—about ten years ago—cut up in building lots, had commissioners appointed, and the whole drift of real estate generally then was the disposition of those plots for building purposes; this plot in question stood on that angular corner, and there seemed to be so many business places in Irvington—stores, groceries, hotels, drinking places, and every other resort of that character—that the town was overstocked, and on that account this corner, to my mind, never shrunk in value in proportion to other property around there.

Q. Well, then, the same happened to these other miscellaneous places you refer to?

57 A. Good many of them; yes, sir; to some more than others.

Q. There was an excess of these places?

A. Yes, sir. Some places, though, had been standard places; they had become settled, as any business place will, from long usage; those places still retain a fair value.

Q. Then it would depend simply upon the good will and custom attached to it?

A. That had a good deal to do with it.

Q. That is independent, as I understand it, of the matter of depreciation of land?

A. Well, I attributed the depreciation of land to hard times and to the excessive price it was held at ten or twelve years ago. I spent $14,000 there, nearly. I would like to get $6,000. I would take it very willingly and step down and out.

Q. This lot is right in the midst of the village?

A. No, sir. It is as you enter the village from Newark.

Q. Is it near the hotel?

A. Yes, sir; it is on the opposite corner from the old hotel.

Q. Isn't that nearly the business centre?

A. No.

Q. Where is the business centre?

A. The business centre is down from Drake's store, the other corner—opposite, north.

Q. In one end of the village?

A. Yes, sir.

Q. Is it a pretty valuable part of it?

A. I don't attribute much value to it.

Q. Now, can you state why it is that misfortune has not abided on this piece of property the same as it has on others?

A. Yes, sir; I can—from the fact that the general boundary of that corner property is not good; it is a sharp-pointed——

Q. It was just as good formerly as it is now?

A. That I don't know, because I don't remember how it was before the road board laid it out.

58 Q. I am talking about this piece of property, assuming that it was seven, eight, or ten years ago the same shape and it has not moved out of its place.

A. I say, by reason of that sharp corner—by reason of the shape of the lot—that it hasn't suffered from shrinkage as much as property that has a nice square frontage; there, for instance, on the other corner—the old Eaton corner; it is a nice lot. There was a time ten years ago when that lot could have been sold; they could have received $8,000.

Q. You don't think corners have any future?

A. No, sir. That lot to-day—I think it could be bought for $3,500 or $4,000. This lot, to my mind, never was a lot where—I looked upon — as a valuable lot.

Q. It is worth, you say, from $1,000 to $1,200?

A. Yes, sir.

Q. Why, then, shouldn't it have been worth more, when other real estate was worth more?

A. Because I don't think it was a lot that anybody who had an eye to business would care about buying.

Q. Suppose it was worth $1,000 in 1871 or '72, $1,000 or $1,200 in 1872, you would consider it worth just as much now, because from its shape and position it would not be affected by the laws which elevate and depress the value of real estate?

A. It would suffer somewhat, as I said before. It would not suffer so much by reason of its shape as property that was more regularly located.

Q. Why does the fact of its sharp corner make any difference in the fluctuation?

A. In the first place, while the property surrounding it was very valuable, by reason of that triangular corner, it was not adapted for business purposes.

Q. Just as much formerly as now.

A. For that reason I say that the fluctuation has not been so hard on that as it has been on other property.

Q. You think that property never goes up or down?

A. I wouldn't have given for that property ten years ago $1,800.

59 Q. You are not in the real-estate business, I presume?

A. I am somewhat; but I wouldn't have given that for that property then.

Q. Do you know Mr. Whittaker?

A. Yes, sir.

Q. Real-estate agent?

A. Yes, sir.

Q. Is he a pretty good judge of valuations of properties?

A. Well, he owns considerable property there. He likes to keep his prices up as well as possible, to tide himself up.

Q. Didn't you know he was a low-price man?

A. Not generally. I should think he was a pretty fair man to value real estate.

Q. If this had been a square lot you think it would have depreciated as much as any property?

A. Yes, sir.

Q. Then a lot of such shape has really an advantage over other property in times of depression?

A. No; I don't think it has.

Q. Suppose property during the next ten years should depreciate generally 50 per cent. in Irvington, you don't think this would depreciate with the other?

A. No, sir; I would not.

Q. Because it is angular?

A. Yes, sir; I think it is unmarketable.

Q. Then it has an advantage over other property in that respect?

A. It might have, so far as shrinkage is concerned.

Q. Can you account for the fact that it ever got to be worth $1,000 or $1,200, having such a shape?

A. Yes, sir; I can.

Q. What gave it any value at all?

A. I will tell you how I account for it. I account for it, after the road board made the change there Mr. Headley thought he had expended a good deal of money there, and he tried to keep the prices up as well as he could. It was his home—the old place there.

60 Q. But the prices he kept up had nothing to do with the market value?

A. No, sir.

Q. Then the fact that he kept up the prices would not make any difference in that regard, would it?

A. I don't know as that would.

Mr. Taylor admits paper marked "2," on the part of the petitioner, as presenting a true state of the assessments for widening Springfield avenue, changing grade of the avenue, and for paving extra width of the avenue.

Paper offered in evidence, of which the following is a copy:

"Statement of amounts due the Essex Public Road Board on the property at the junction of Springfield and Clinton avenues, assessed in name of Caleb B. Headley and now owned by Jacob Skinkle.

"For opening Springfield avenue, sold Dec. 26, 1876, for $1,144.40; interest at 15 per cent. from date of sale.

"For change of grade of said avenue, sold Sep. 5, 1881, for $134.81; interest at 15 per cent. from date of sale.

"For paving extra width, assessed Oct. 13, 1873, for $890.74; interest at 7 per cent. from date of assessment.

"A correct statement from the books of the board.

"GEO. B. CORNISH, *Clerk.*"

61 JACOB SKINKLE, a witness produced on his own behalf, having been duly sworn, on his oath, according to law, deposeth and saith:

Direct examination by Judge FORT:

Q. You reside in Newark, and now own the property formerly of Caleb Headley?

A. Yes, sir.

Q. You came into possession of that how—by foreclosure?

A. Yes, sir; I foreclosed.

Q. Were you acquainted with that property before Springfield avenue was opened and widened, or rather widened by the Essex Public Road Board?

A. I was.

Q. Do you remember the buildings that were on the property?

A. Yes, sir.

Q. The buildings that are now on the property, were those on the property in——

A. Yes, sir. The buildings were sold off and bought by Mr. Headley second-handed.

Q. Bought by whom first?

A. Paul Buchanan.

By Mr. TAYLOR:

Q. Were you present at the sale?

A. I was not.

Question objected to.

Further direct examination:

Q. As to the value of the buildings now on the property and that were on the property prior to the widening by the road board, which is of the most value?

A. On before.

Q. When you bought this property were there any other buildings on it than those now on it?

A. There was a small building that belonged to Mr. Drake.

Q. Mr. Drake was what, a tenant?

62 A. Mr. Drake had leased a portion of the grounds for a number of years.

Q. What became of the building at the termination of his lease; was it taken off?

A. I purchased it and moved it off.

Q. Purchased it of Mr. Drake, did you?

A. Yes, sir.

Q. Then, aside from that building, what other buildings, at any time since the road board widened and took down the buildings on the property at the time of the widening, besides the buildings now on the property, have been upon it?

A. There was a large stone building.

Q. No, no; now—since?

A. And a wooden building; a wooden building that I removed on another part of the lot and put a cellar under it and overhauled it; that building is there now, and there was a small barn on the rear end of the lot on Springfield avenue, and that was moved back.

Q. On the property?

A. On the property.

Q. Is it still there?

A. It is still there.

Q. And the other building that was moved back and a foundation put under it, and cellar, &c., that is still there?

A. That is still there. I have improved it some.

Q. You refer to a large stone building. Was that ever on the property after the widening?

A. No, sir; it was torn down.

Q. By what—by the widening or otherwise?

A. Yes, sir; it was sold off; it was torn down.

Q. Was it within or outside of the widened space?

A. The old barn was entirely in the street, the old stone house was about half in the street, and the other wooden building——

Q. Never mind that; just the stone building.

A. That was entirely—that was about half in the street; it run right—it was a square—that is, built to run from one corner to the other.

63 Q. I want to know when that building was taken down, if you know from your own knowledge?

A. It was taken down shortly after the sale by the road board.

Q. Was that at the time the improvement was going on or afterwards?

A. Well, it was all done about one time. I couldn't say exactly.

Q. You know the improvement—what I mean?

A. It was soon after the road board sold it.

Q. What I mean by the improvement is, was that done while the road was being widened and graded and all that sort of thing?

A. Yes, sir; being done about that time. I saw them taking it down. The wooden building was almost entirely out of the street—a small portion of it was—I mean was on the street. The wooden building that they have moved over on this side was all in the street, with the exception of a little corner.

Q. Was that stone building such a building as could be moved?

A. No, sir.

Cross-examination by Mr. TAYLOR:

Q. You said you were the owner of the premises in question?

A. Yes, sir; I am.

Q. Have you the deed with you?

A. I have not.

Judge FORT: I will produce the deed and mark it Exhibit No. 3 for petitioner.

Q. You bought the property under a foreclosure sale?

A. Yes, sir.

Q. Of the mortgages you held or mortgage you held?

A. Yes, sir.

Q. Can you produce the mortgage?

A. I can, I suppose. I remember the date of the mortgage.

64 Q. Please produce the sheriff's deed to you and the bond and mortgage. Was there more than one?

A. No.

Q. You said you knew the date of the bond and mortgage. Can you give about the date?

A. First of June, 1875.

Q. You had other property and have still other property in Irvington?

A. It was all foreclosed together.

Q. Don't you own property on Clinton avenue down in the vicinity of Irvington?

A. I own the property where the ditch was.

Q. That is in Irvington, isn't it?

A. It is right by this—opposite.

Q. Considerable other property—how much?

A. I own two houses that I bought under this mortgage in Smith street and sixteen acres opposite this property—nearly opposite.

Q. Was that assessed, too, formerly, for the construction of that ditch?

A. Yes, sir.

Q. You were awarded damages?

A. I think I was—about $200 damages. It cost me more than that——

Q. I didn't ask you how much you were awarded. You remember you were not awarded anywhere near what you thought you ought to have been.

A. Well, I never found any fault with it, as I know of. It cost me all that I——

Q. I don't care to go into that especially.

A. To put the fences back.

Further cross-examination deferred till the production of the deed and mortgage.

65 NORMAN I. MACOMBER, a witness produced on the part of the aforesaid petitioner, having been duly sworn on his oath according to law, deposeth and saith:

Direct examination by Judge FORT:

Q. You reside at Irvington?

A. Yes, sir.

Q. How long have you resided there?

A. Ten years.

Q. Did you reside there when the improvements were made on Springfield avenue, when it was widened, and before it?

A. No, sir; I wasn't there. I was there when they finished.

Q. You mean after it was finished or when they were finishing up?

A. I came there in 1872 when they were finishing.

Q. Own property in Irvington?

A. Yes, sir.

Q. How near the property of Caleb B. Headley, now of Mr. Skinkle, at the junction of Clinton and Springfield avenues? How near that property?

A. I couldn't say.

Q. Well, about?

A. Probably within one thousand feet of it.

Q. Do you know anything of the value of properties? Have you in Irvington any way by which you can form any judgment as to values?

A. Well, I never had much dealing in real estate. I bought some property there.

Q. When?

A. I bought it in 1876.

Q. Do you know of any sales of real estate there since or prior?

A. Yes, sir; I do.
Q. Personal knowledge of it?
A. Yes, sir.
Q. You know this property of Headley's—you know where it lies?
A. Yes, sir.
66 Q. Have you an estimate as to the value that you are willing to make on it?

Testimony of the witness objected to as not being an expert.

Q. Just give me your estimate.
A. Well, I made an estimate on it—that is, I judge from the way property has been selling around there.
Q. Well, what is it?
A. I think it is worth about $1,500.

Cross-examination by Mr. TAYLOR:

Q. What is your business?
A. Coal and wood yard.
Q. In the village of Irvington?
A. Yes, sir.
Q. Have you dealt in real estate at all except to purchase a lot?
A. No, sir.
Q. Where is the lot or property which you say you purchased in 1876?
A. On Springfield avenue.
Q. About 1,000 feet from this property?
A. I should judge it was in the neighborhood of that.
Q. There isn't any assessment on it, is there?
A. Yes, sir.
Q. Road board?
A. Yes, sir.
Q. How much is the assessment on yours, if you know?
A. In the neighborhood of $500.
Q. Who formerly owned it?
A. John N. Crawford.
Q. The assessment was on it when you purchased it, wasn't it?
A. Yes, sir; it was to have been paid, but he didn't do it. He beat me out of it.
Q. You have a little interest, then, in the result of this?
A. I don't know as I have.
67 Q. Have you been spoken to anybody about getting your assessment arbitrated in any event?
A. No, sir; never expected to be able to pay it.
Q. Have you been spoken to about it?
A. No, sir.
Q. What sales do you know of besides the sale that was made to you, that you have personal knowledge of?
A. You mean within a short time?
Q. Yes; or within three or four years?
A. Well, there is a lot just below me sold to——
Q. How do you know it was sold?

A. Well, sir, now you are getting me down to a fine point.
Q. You know it by hearsay, don't you?
A. There has not been much property sold right on Springfield avenue; I don't know that I know of a lot that has been sold on Springfield avenue within five years; I wouldn't swear that there has been.
Q. Then you know of none since 1876, except yours, do you?
A. Not on Springfield avenue.
Q. Then do you feel competent to value property there now?
A. I know what I would give for a piece of property if I wanted to buy it.
Q. But do you feel competent to go around and examine property in Irvington and put a value on it?
A. Real-estate business isn't my business.

COUNSEL: That is all.

Adjourned till Friday, December 22d, at 2 p. m.

68 DECEMBER 22D, 1882.

Examination resumed pursuant to adjournment, in the absence of Mr. Taylor, taken subject to cross-examination.

MAHLON STOCKMAN, a witness produced on the part of the aforesaid petitioner, having been duly sworn on his oath according to law, deposeth and saith:

Direct examination by Mr. FORT:

Q. You are township clerk?
A. Yes, sir.
Q. Of Clinton township?
A. Yes, sir.
Q. You keep the tax record?
A. Yes, sir.
Q. Is that paper in your handwriting? (Witness shown paper.)
A. Yes, sir.
Q. What is that?
A. Statement of taxes against the property of J. Skinkle, corner of Clinton and Springfield avenues, Irvington.
Q. Unpaid?
A. Unpaid.

Paper offered in evidence and marked Exhibit No. 4 for petitioner.

Copy of Paper.

A statement of taxes against the property of J. Skinkle, corner of Clinton and Springfield avenues, Irvington.

Tax deed of 1875		$38 95
Interest from October 31st, 1877, to September 18th, 1882, at 7 per cent.		13 28
Fees, &c.		0 45
		$52 68

Tax deed of 1877	32 49	
Interest from October 17, 1878, to September 18, 1882, at 7 per cent.	8 89	
Fees	0 45	
		41 83
69 Tax lien of 1878	29 34	
Interest from October 20, 1878, to September 18, 1882, at 7 per cent.	8 03	
		37 37
Tax lien of 1879	34 20	
Interest from October 20, 1879, to September 18, 1882, at 7 per cent.	6 97	
		41 17
Tax lien of 1880	30 75	
Interest from October 20, 1880, to September 18, 1882, at 7 per cent.	4 12	
		34 87
Tax lien of 1881	28 85	
Interest from October 20, 1881, to September 18, 1882, at 7 per cent.	1 81	
		30 16
Tax lien of 1882	24 00	24 00
Total		$262 08

M. STOCKMAN,
Township Clerk.

Adjourned to Tuesday, the 26th day of December, at 2 p. m.

DECEMBER 26, 1882.

Continuation of examination pursuant to adjournment.

JAMES PECKWELL, a witness produced on behalf of the aforesaid petitioner, having been duly sworn on his oath according to law, deposeth and saith:

Direct examination by Judge FORT:

Q. You reside at Clinton township, Irvington?
A. Yes, sir; Camptown.
Q. How long have you been living up there?
A. Seven years.
Q. Own property in that neighborhood?
A. Yes, sir.
Q. Do you know the location of the property in this controversy, belonging to Jacob Skinkle, formerly of Caleb B. Headley?
A. Yes, sir.
70 Q. Do you know of sales of any real estate in that neighborhood within any recent period of time?
A. I know of no sales that I know of being consummated, with the exception of a piece of property I negotiated for.
Q. Where is that?

A. On Clinton avenue west.
Q. How far from this?
A. Well, between three and four hundred feet, perhaps.
Q. Lots or——
A. Lots; vacant lots.
Q. From your knowledge of this property, what, in your judgment, is its value?

Objected to, as witness has not shown yet that he is an expert.

A. Well, in my opinion, located as it is, it has but very little value.
Q. What is the matter with the location?
A. It is commercially—in my opinion it has no value; for residence it has none. It is so situated—lying between Springfield avenue and Clinton avenue—it receives, from the southwest, north, and northwest, all the dirt and dust that comes down those avenues, down into this like a funnel, completely envelopes the whole thing there by the dust—is why I say it has no commercial value for stores or dwellings; it might have a value under circumstances; it would be a desirable spot for a factory where they wanted light all around it, provided there was any business in that community to do and facilities, transportation. The property, in my opinion, has no value, you may say; in fact, I don't know—real estate there isn't worth—take it for agricultural purposes anywheres in that community, worth—isn't worth $200 an acre.
Q. Can you make any estimate besides this general statement?
A. I made an estimate one day. I was asked what I thought
71 it was worth and I looked at it. I said about $1,500. Since that I don't think I would give that for it, taking all the disadvantages. I consider that the worst part of the whole village, receiving all the dust of these openings. That property located right around gets the whole of the clouds of dust. We have very high winds. The location that I have I think is about the windiest place that I ever was in, excepting the mountains. I have been alarmed. The wind comes down that Orange valley. I sometimes think there is a train of cars broke loose from the Morris and Essex coming down on us. Then my being elevated above this that forms a sort of an eddy around there—the whole three or four openings on the property—it lays pretty low.

Cross-examination by Mr. TAYLOR:

Q. You spoke of the value of premises not being over $200 for agricultural purposes?
A. I don't think any farmer—any man—could pay over $200 and get interest.
Q. The village isn't devoted to agriculture, is it?
A. Principal part of it is.
Q. Is it?
A. Yes, sir.
Q. Are there cow pastures?

A. Well, there are some cows there. I never had any experience in keeping cows.

Q. Have you known of any sales at all during the past five or six years—personally known of them?

A. I know of sales that have taken place. I don't remember the price paid. Mr. Heinisch purchased some property adjoining me in Union avenue.

Q. Do you know it simply by having been informed by somebody?

A. Yes, sir.

Q. But no personal knowledge?

A. The only sale that I know is the one that is under negotiation.

Q. Has it taken place?

A. Adjoining the school-house.

72 Q. Has the sale been carried out?

A. Not entirely. The price has been agreed upon.

Q. What is that?

A. One hundred and fifty dollars.

Q. What is the property?

A. Fifty feet; supposed to be 50 x 100. It is adjoining the school-house. I, as one of the trustees of the school, deemed it desirable for us. It is on good, high ground. They sent me word that they would take that amount for it.

Q. Situated near the school-house, do you say?

A. Yes, sir.

Q. Does that enhance or depress the value of it?

A. For residence it might probably be pretty noisy around there.

Q. The school-house might be quite as much of a nuisance as the dust that concentrates in the vicinity of the premises in question?

A. No, sir.

Q. How far are you away from this dust?

A. I am a little on the north of it.

Q. How far?

A. Well, the highest probably is 250 to 300 feet on an elevation.

Q. And yet you are troubled with the dust where you are?

A. Very little.

Q. High winds?

A. I only speak of this dust that comes sweeping down those avenues.

Q. The only sale you know of is the one that you have not completed yet?

A. Yes, sir.

Q. And do you think that from your simple knowledge of an incomplete sale you are prepared to pass judgment upon the value of real estate in Irvington?

A. Well, my opinion——

Q. No; do you think?

A. I have placed no value on real estate up there.

Q. That is not the question.

73 A. It is isolated away, so that for agricultural purposes a man could not afford to pay over $200 to get interest off.

Q. That is aside from the question.

A. But a man that is going to build in Irvington he would have to buy pretty low in order to induce him to buy to build a house.

Q. Is everything low there?

A. Yes, sir.

Q. Real estate is especially low, isn't it?

A. Yes, sir.

Q. How long has it been low?

A. Well, I guess since 1876—'75 or '76 or 1874, along there.

Q. What brought it down?

A. Oh, I suppose, want of business—depression.

Q. Has it come down very much?

A. I don't know; no more than the ratio in the city.

Q. I asked you a question a few minutes ago, which you didn't answer, whether you thought, from your only knowledge of sales of real estate being in respect to one piece that has not been completed, would give you confidence in judging of the value of real estate generally in Irvington?

A. Yes, sir; there is only one thing that would make Irvington desirable; it has pure air. Some places about it are more valuable than others.

Q. It is valuable for its air and not for its land?

A. Yes, sir. Nothing would have induced me to have gone and built in Irvington except the location that was offered at the time I bought it—the elevation. Some two years ago I did purchase a piece of ground—I only want to answer the question since you have spoken to me about the sales—that I did purchase a piece of property a few years ago adjoining me and paid pretty well for it in order to get rid of the nuisance.

Q. What did you pay for it?

A. I think I paid in the neighborhood of $700.

Q. How large a piece?

A. 50 by 200.

74 Q. You didn't buy it for agricultural purposes?

A. I bought it to get rid of a nuisance.

Q. Are there many nuisances around Irvington?

A. No, sir; except it is what is spued out from the city of Newark occasionally. They make the suburbs of Irvington along over the city line a dumping place for the refuse matter and excrescences of the city. Sometimes that makes it a nuisance.

Q. You wouldn't give much for any property there, would you?

A. No, sir.

Judge Fort offers paper in evidence made by Hon. David Young, surveyor, which is marked Exhibit "4" on the part of the petitioner and admitted by consent; offered to show the character of the property and dimensions.

DANIEL M. HEDDEN, a witness produced on the part of the aforesaid petitioner, having been duly sworn on his oath according to law, deposeth and saith:

Direct examination by Judge FORT:

Q. You reside in Irvington?
A. I do.
Q. How long have you resided there?
A. Well, for the last 45 years, most of the time.
Q. Do you remember when Springfield avenue was widened?
A. Yes, sir.
Q. And the grade changed?
A. Yes, sir.
Q. And paved?
A. Yes, sir.
Q. Do you remember the property formerly of Caleb B. Headley?
A. Yes, sir; very well acquainted with it, and have been for a good many years.
75 Q. Were you acquainted with the property and the character of the buildings, &c., that were on it prior to the widening?
A. Yes, sir.
Q. What buildings were on that property at the time that road was widened?
A. There was a big stone building and this wooden building that is there now.
Q. What became of those buildings, if you know?
A. Paul Buchanan bought them at the sale.

By Mr. TAYLOR:

Q. Were you present, sir?
A. I think I was—pretty sure I was.

Further direct:

Q. You were present?
A. I was there at the day of the sale.
Q. Who bought them?
A. Paul Buchanan.
Q. Who sold them?
A. Well, now, I don't remember who sold them.
Q. You don't remember who the auctioneer was?
A. No, sir.
Q. Do you remember the bids on the building?
A. I was telling Mr. Skinkle that I thought it fetched less than $50. He thought it was more, but come to find out it wasn't quite $50.
Q. You have ascertained, have you, since?
A. Yes, sir.
Q. What became of the stone building?
A. Mr. Headley tore it down. He bought it back again from Mr. Buchanan.

Q. Is it on there now?

A. No, sir; I think not.

Q. The buildings that were on prior to the widening by the road board and the buildings that are there now, which were the most valuable?

A. The most that were torn down, by considerable.

76 Q. The old building, to which you refer, is still on the property?

A. Yes, sir; kind of a store-house it was.

Q. Was it moved back?

A. Yes, sir; it is moved back.

Q. Was it more valuable in the condition it was?

Objected to as leading.

Q. In which condition was the building that is now on the property most valuable—in the condition it was prior to the removal or in the condition it is at the present time?

A. Well, it was—I would sooner have it as it was in the store before they were ever touched.

Q. Are there any other buildings upon this property now than this old building?

A. None but the blacksmith shop—small barn turned into a blacksmith shop.

Q. Was that barn there before?

A. That barn was there before, the same place as it is now, I believe, without it has been shoved back.

Q. Were there any buildings on the property that were not sold, do you remember?

A. All sold, I believe. He sold the whole of them at one sale. He bought the whole of them at once.

Q. The barn?

A. The barn and all. The whole of them were sold all at once.

Q. Do you know who they were sold by?

A. They were sold by the directors or something or other of the road board—sold under the road board.

Q. Do you own any property in this neighborhood?

A. I do not.

Q. Do you know anything about the value of property in that neighborhood?

A. Yes, sir; I think I know the value of some property. I know a piece that was sold last spring—11 acres within less than half a mile of Irvington—sold for $1,125 or $1,135; 11 acres on as fine ground as I know of anywhere in that location.

Objected to.

77 Q. That is farm land?

A. Yes, sir.

Q. Do you know who sold that property?

A. It was sold by John N. Crawford's estate.

Q. Who sold it?

A. Dr. Smith.

Q. One of the road-board commissioners?
A. No, sir.
Q. One of the commissioners of the Essex Public Road Board now?
A. No. I think——
Q. You mean Freeholder Smith?
A. Yes, sir; Freeholder Smith.
Q. Now, then, do you know of any other sales?
A. I don't know of any, only a house and lot my son bought there in the village.
Q. Where is that?
A. Lays right in the village.
Q. Is the butcher your son?
A. Yes, sir.
Q. And from what you know of the value of property in Irvington what are you willing to state——

Objected to, as he has not shown competency to pass judgment on the value of real estate.

A. Houses and lots can be bought there very low, I know.
Q. I am talking about this particular piece of property. Now, what is it worth?
A. I wouldn't like to give, if I had as much money as I could back down hill on ice, $1,200 for it.

Cross-examination by Mr. TAYLOR:

Q. What is your business?
A. Butcher.
Q. Do you own any real estate in Irvington?
A. None but two burying lots, sir.
Q. Have you ever owned any there except burying lots?
A. Yes, sir.
78 Q. When did you last own any lots, except burying lots, in Irvington?
A. Twenty-two years ago.
Q. Have you dealt in real estate since?
A. No, sir; but I have seen it sold and bought.
Q. Were you present at the sale of these buildings which you mentioned?
A. I was.
Q. All the time?
A. All the time.
Q. Were you there to buy?
A. No, sir; I was not. I boarded with Mr. Headley at the same time when it was.
Q. You boarded with Mr. Headley?
A. Yes, sir.
Q. What time was the sale?
A. Well, now, I couldn't tell whether it was in the forenoon or in the afternoon. I wouldn't be positive.
Q. You were not transacting your own business that day?

A. Yes, sir; I was tending to my own business, because I had it in this wooden building—had my butcher shop.

Q. Were you carrying on the butcher business when this sale was going on?

A. Yes, sir.

Q. So you tended to your business and tended the sale, too?

A. I was out of doors tending to the sale and had some one else in the shop attending to the business.

Q. You were out tending the sale of the——

A. Yes; and saw a good deal of disturbance at the sale. Mr. Headley swore he would shoot the first man that came onto this property.

Q. On what qualifications do you count your opportunities for observations for passing judgment on the value of real estate in Irvington, when you have owned none yourself for twenty-two years, except burying lots?

79 A. Because there is no business there to warrant anybody in coming there to buy.

Q. Are you carrying on the butcher business now?

A. Yes, sir.

Q. I thought you said there was no business there?

A. Our business is more out of town than it is there. We have order wagons running all the time; we don't depend on the place.

Q. Your son owns some real estate?

A. Yes, sir.

Q. He is afflicted with a road-board assessment, too, isn't he?

A. That I don't know; I think he is, though.

Q. Don't you feel very sure of it?

A. I think so.

Q. There are a good many others troubled with road-board assessments around there, are there not?

A. Yes, sir; I guess the most of them.

Q. And they would like to get their assessments removed or abated, wouldn't they?

A. Yes, sir.

Objected to as hearsay evidence.

Q. Then you speak of a sale of 11 acres for $1,100?

A. $1,100 and some few dollars.

Q. Where was that?

A. That was in Lyon avenue, between a quarter and a half a mile of the centre of the village.

Q. Public sale?

A. Public sale, I believe; right out there on the street just above Mr. Skinkle's place.

Q. Who was the auctioneer?

A. Dr. Smith, I think, was auctioneer and salesman altogether.

Q. When was it?

A. I guess it was about a year ago; maybe a little over, maybe a little less.

Q. Were you there all the time?

A. I was there when they were selling several pieces.
Q. Did you hear anybody bid?
A. I did, sir.
80 Q. Did you hear a bid for $1,100 for this?
A. I heard of a bid for $1,100 and some odd dollars.
Q. Was there a bid after that?
A. It was knocked down to this woman, $1,100 and some odd dollars; I can't say.
Q. How did you happen to be tending that sale?
A. I can't remember exactly the dollars.
Q. Was that near your butcher shop, too?
A. That is near the butcher shop where we are at present.
Q. So that you could attend to the dressing of your beef and other animals and watch the auctioneer's movements at the same time?
A. Certainly; if we have some one else to attend to the business. The business is going on now and I am here.
Q. Did you think when you came that you were sufficiently an expert to enlighten the court on the question of the value of property in Irvington?
A. I don't know as to that.
Q. And warrant you in leaving your business. What are the elements of the value of this property of which you have spoken?
A. Which property do you mean?
Q. Headley property; what are the elements of the property there?
A. Any of it?
Q. Of this piece.
A. This, Mr. Skinkle's piece of property, as I told you before, I wouldn't like to give, if I wanted to buy, I wouldn't like to give over $1,000 for it.
Q. You haven't wanted to buy any real estate for 20 years or more, have you?
A. No, sir.
Q. And you wouldn't be troubled with an intense desire or anxiety to buy this property, would you?
A. No, sir.
Q. Just as much desire to buy this as any other?
A. Yes, sir.
81 Q. You can get it as cheap, I presume, as any you can get, can't you?

Witness paused.

Q. If you can't answer that I will ask you this: If you haven't dealt in real estate for over twenty years how does it come that you appear here as an expert to enlighten the court on the value of property in Irvington?
A. I know by what other ones pay for property what it is sold. I happen to be around and hear of different sales.
Q. You happen to be at sales, therefore you instantly become an expert?
A. I happen to be at sales and hear.
Q. Does that make an expert?

A. Not that I know of. I get some information, though, every time.

COUNSEL: That is all.

JAMES PECKWELL, a witness, having been heretofore sworn, being recalled, deposeth and saith further as follows:

Redirect examination by Judge FORT:

Q. Your property was within the line of the property assessed by the road board?

A. Yes, sir.

Q. You paid the assessment?

A. Yes, sir.

Q. Can you call to mind any other property that you know of being purchased within the last five years than that you have mentioned?

A. This piece of property which Frederick Hedden now owns I purchased for him on the day of sale.

Q. What was the bid?

82 A. It is two years ago; it will be three years, I think, in May.

Q. What was the bid—what was the price?

A. Eleven hundred dollars.

Q. How was the property to be conveyed to him?

Objected to.

Q. What with reference to the assessments on it?

A. I don't understand.

Q. How was it to be conveyed to him with reference to the assessment of the road board?

Objected to for the reason that it doesn't make any difference how it was done.

A. It was to be sold to the highest bidder; afterwards the purchaser made it over to Mr. Hedden.

Q. You made it over to him?

A. The road-board assessment had been light.

Q. As to comparing the values two years ago between the property purchased by Hedden—you for Hedden—and this property?

A. Property has been at a standstill in that community ever since the——

Q. As to the valuations between Hedden property and this property?

A. I prefer the Hedden property as a residence. As I said, this has no commercial value on account of its location. The Hedden property is about 400 feet south of this, on Union avenue—that is, 30 by 250 or 300 feet; good-sized house on it.

Recross-examination by Mr. TAYLOR:

Q. You considered the taxes reasonably low; you considered the taxes a fair amount?

A. I don't know anything about it, but I have many times thought the original assessment——

Q. I didn't ask you about the original assessment, but the taxes on that property—I mean the road-board assessments on the property.

A. The property that I am owning now, there has been three payments made upon that.

83 Q. Is it free from assessments now?

A. Yes, sir. This property recently—the lot that I first purchased—had an assessment of $10 or $15, while 100 feet from that only $1. What I always thought was an outrage that they didn't cover more territory, and they did in the second.

JACOB SKINKLE, a witness heretofore sworn on his own behalf, being recalled for further cross-examination, deposeth and saith further as follows:

Direct examination by Judge FORT:

Q. The mortgage produced here—you produced the original mortgage made by Caleb B. Headley and wife to Jacob Skinkle, dated June 1, 1875, and bond secured by the mortgage; deed from S. V. C. Van Rensselaer, sheriff, dated November 11, 1879, for the same property mentioned in the mortgage made to Mr. Skinkle, and a conveyance sale under a *fieri facias* out of the court of chancery to sell the property mentioned in the mortgage from Headley to Skinkle. The other tract mentioned in the sheriff's deed and the mortgage from Headley to you, Mr. Skinkle, are there any buildings upon that?

A. There was one other tract; yes, sir. The other tract is 100 feet front, 125 feet deep, with two buildings on it.

Q. Any incumbrance ahead of yours on the other tract?

A. Yes, sir.

Q. What?

A. I think I paid $1,050.

Q. Mortgage?

A. Mortgage. I have got the mortgage, and then I paid about—then I believe I paid about $200 road-board tax and taxes to the township. The road-board tax was a little less than $100.

84 Q. On the other tract?

A. On the Smith-street property.

Q. The mortgage that you paid is this one, which you produce, to the trustees of the Irvington school district?

A. Yes, sir.

Q. For $975?

A. Yes, sir. It is on the back of the bond there what I paid. I think about $1,050.

Q. $1,049.81. Is that the amount that you paid?

A. Yes, sir.

Q. Is that their receipt on the bond?

A. Yes, sir.

Mortgage offered in evidence from Headley to the trustees of the

Irvington school district, dated April 22, 1871, recorded in D 5, 162, marked Exhibit 5.

Q. Have you ever paid anything on the Headley property?
A. Yes, sir.
Q. What?
A. About $70, for taxes.
Q. What else have you paid?
A. I put some repairs on it.
Q. On the Headley property?
A. Yes, sir.
Q. About how much?
A. Well, I suppose $150 to $200 altogether, probably.

Judge Fort also offers in evidence another deed from William Shannon and wife to Caleb B. Headley, dated May 3, 1864, recorded in F 12, 204; consideration, $2,750.

Cross-examination by Mr. TAYLOR:

Q. Did you know this property at the time Mr. Shannon sold it to Mr. Headley?
A. Yes, sir.
85 Q. What buildings were upon the property then in comparison to what were on it at the time the road board went through?
A. The same buildings that the road board took.
Q. You became the owner of the premises by virtue of this sheriff's sale to you?
A. Yes, sir.
Q. In November, 1879, did you not?
A. Yes, sir.
Q. I see the deed was acknowledged on the 19th of September, 1879, and you purchased the mortgaged premises, which included the premises known as the Headley premises?
A. Yes, sir.
Q. Subject to any incumbrances, including a mortgage for $975?
A. I bought it subject to the mortgage for $975.
Q. You bought it subject to all incumbrances, didn't you?
A. I didn't know what there was on it.
Q. You had been assessed before by the road board, hadn't you—before 1879?
A. Me?
Q. Yes.
A. Yes, sir.
Q. And you knew of the improvements, didn't you, on Springfield avenue?
A. Yes, sir.
Q. You knew the property along the line in the vicinity of Springfield avenue had been assessed for the improvement, did you not?
A. Yes, sir.

Q. Didn't you know it when you took your mortgage on the premises, too?

A. I supposed there was an assessment there, but I wasn't aware of the amount. I didn't know.

Q. You had a search made when you loaned the money on this mortgage in June, 1875?

A. Yes, sir.

Q. You knew what incumbrances there were on it?

A. It didn't show all the incumbrances.

86 Q. What was the other property—that is, the second lot in your mortgage—estimated to be worth at the time you loaned the money on it?

A. Well, I don't know what they estimated it to be worth. I knew about what it cost. The buildings that were put up on it cost $4,300, so they told me; they told me. They were very good buildings, and the purchase-money I understood was $2,000 for the old school-house, and the lot is 100 by 125, but now I don't believe I could get $3,000 for the whole.

Q. You bought both of the lots together at sheriff's sale for $500?

A. I suppose so; I wasn't at the sale.

Q. You were represented at the sale?

A. Yes, sir; by my attorney.

Q. The two lots seem to have been sold together?

A. I suppose so; I wasn't there; I don't know anything about it.

Q. I see the sheriff's deed to you was recorded Dec. 5, 1879, and I presume it was delivered about that date, was it not?

A. I don't know anything about it. I had nothing to do with it. I suppose Mr. Keen, who had it sold, attended to it—attended to putting it on record.

COUNSEL: That is all.

It is agreed between counsel that any papers on file with the road board with reference to this assessment that either side may use them without any formal offering of them in evidence.

Petitioner rests.

Adjourned.

87 FEBRUARY 17, 1883.

ELIAS W. DRAKE, a witness produced on the part of the aforesaid respondent, having been duly sworn on his cath according to law, deposeth and saith:

Direct examination by Mr. TAYLOR:

Q. Where do you reside?

A. Irvington.

Q. How long have you resided there?

A. About ten years.

Q. Do you know what is called the "Headley property?"

A. Yes, sir.

Q. Which is involved in this controversy?

A. Yes, sir.
Q. How long have you known this property?
A. Oh, I have known it for about thirty years.
Q. Are you acquainted with the value of property in Irvington?
A. Somewhat; yes, sir.
Q. And have known of sales?
A. Yes, sir.
Q. And you own property?
A. Yes, sir.
Q. What is the present value of the property?
A. The Headley property?
Q. Yes; in the form and situation in which it is now.
A. I think $2,000 is the fair price of it.
Q. You remember the time when the improvement was made—the widening?
A. Yes, sir.
Q. And laying out of Springfield avenue anew?
A. Yes, sir.
Q. What, in your judgment, was the value of the property at that time?
A. Well, I think the property was worth at that time in the neighborhood of $5,000 to $6,000 in the shape it was at that time.
Q. Had you any intention then of buying it?
A. Not at that time; no, sir.
88 Q. Do you know of any sales recently in Irvington?
A. Yes, sir; lots on Union avenue; that is the only thing that has been sold——
Q. Sold to whom?
A. So reports say, to Mr. Criqui by the executors of Abram Johnson.
Q. How far is that property situated from this and how does it compare in situation?
A. That is about five blocks, I should say, from the corner of Union avenue.
Q. What is the size of the blocks in Irvington?
A. Well, I should think some six or seven hundred feet.
Q. Well, as valuable a location as the property in question?
A. That Mr. Criqui bought?
Q. Yes.
A. No, sir; Mr. Headley's property is more of a business property.
Q. Do you know how much it sold for?
A. I have understood $9.50—$9.50 a foot.
Q. What, in your judgment, would be the value, per foot, of this property, making all allowances?
A. I should think that property, by the foot, was worth in the neighborhood of $13 to $15 a foot—not inside of $15.

Cross-examination by Judge FORT:

Q. The $9.50 a foot is on the basis of front feet, running 100 feet deep?

A. 175 feet deep.

Q. And your estimate of $13 to $15 a foot on Springfield avenue or Clinton avenue would be upon the idea of a lot of that depth—175 feet?

A. No; if it was 175 feet deep I should count it worth more than that.

Q. Well, 100 feet, then?

A. I think that lot as it lays there is worth from $13 to $15 a foot.

Q. Any part of it?

A. Just the shape it lays there.

89 Q. You mean take the whole lot together?

A. Yes, sir.

Q. But you don't mean to say that up at the point for the distance, say, of 100 feet, where there is no width to it, it is worth such a price as that?

A. I would rather have the point than the rear.

Q. Would you be willing to pay $10 a foot at the point for a distance of 75 or 100 feet, just taking the point?

A. I think I will give that now—give me 100 feet deep.

Q. You understand how that land lays there?

A. Yes, sir; here is the point, and it runs back there 100 feet.

Q. Just 100 feet on each street?

A. I think it is worth $10 a foot.

Q. For the front foot just on the point?

A. Well, I mean here (indicating). Take 100 feet from here down to here.

Q. Down along Springfield avenue?

A. Then run your line right across to the 100 feet on the other street; yes, sir; right across to each street.

Q. I suppose all you know about this Union avenue property is what you have been told?

A. Oh, I don't know anything about it any more than that at all, sir. I bought a lot right alongside it twelve years ago and paid $1,000 for it.

Q. Good deal of difference between the value of property in Irvington twelve years ago and now?

A. Yes, sir.

Q. You speak of the value of this property at the time the road board went through? You estimate at $5,000 or $6,000 the buildings and all, as they then stood?

A. Yes, sir.

Q. Do you know the building—the stone building—that was on the property and was taken away?

A. Yes, sir.

Q. That was a valuable building on the property?

A. Yes, sir; very good building.

90 Redirect examination:

Q. What per foot did you pay alongside of this Criqui property?

A. I paid $20 a foot.

Q. What is it worth now?

A. Well, I think it is worth $10 a foot. I think all that property along there is worth $10 a foot.

Q. How far do you live from the Headley property in question?

A. About 500 feet.

Q. Then you are thoroughly familiar with the shape of it?

A. Yes, sir.

Q. To what uses could that property be put advantageously?

A. There are many uses that it might be put to; make an excellent place for a coal yard if a man wanted a business of that kind.

Q. How far is it from what you would consider the centre of the village?

A. It is right there in the centre of the village.

Recross-examined:

Q. I suppose that place would hardly be suitable for a meat market or grocery store on account of the dust?

A. It is rather objectionable for that.

Q. It would have to be some sort of business that didn't have to be perfectly cleanly?

A. Yes, sir; it would be better for that.

Q. Bakery or anything of that kind—would it be objectionable?

A. Anything where you wanted to keep very clean——

Q. It would not be a good property for——

A. It would not be so good; no, sir.

Q. Is it not an exceedingly dusty place in both avenues there?

A. Yes, sir; no doubt about that.

Q. Best use it could be put to would be a coal yard?

A. Some kinds of business just as good there as anywhere else.

91 Redirect examination:

Q. What is there peculiarly objectionable in regard to the dust?

A. Well, it stands right so you get the west wind all the time when the wind blows at all.

Q. Are the streets sprinkled in Irvington?

A Well, partially.

Q. That would obviate it, I suppose?

A. That helps it.

Recross-examination:

Q. But dust flies all around there, doesn't it?

A. Yes, sir.

Q. Rather an elevated situation?

A. No; that is a little low—that piece.

Q. Well, it is exposed to all the winds, isn't it?

A. Yes, sir.

MAHLON S. DRAKE, Jr., a witness produced on the part of the aforesaid respondent, having been duly sworn on his oath according to law, deposeth and saith:

Direct examination by Mr. TAYLOR:

Q. Do you reside in Irvington?
A. Yes, sir.
Q. How long have you resided there?
A. Ever since I have been born.
Q. And that was?
A. Twenty-seven years.
Q. Are you acquainted with the property known as the Headley property?
A. Yes, sir.
Q. How long have you known it?
A. Well——
Q. Nearly twenty-seven years?
A. Hardly that, I guess; known it about ten or twelve years.
92 Q. Do you know of the value of property in Irvington?
A. I had ought to.
Q. What means of knowledge have you?
A. Well, bought considerable; buying all the time.
Q. What, in your judgment, is the value of this property now?
A. Well, with the incumbrances or without it?
Q. The value of it?
A. Three thousand dollars.
Q. You are acquainted with the form of it?
A. Yes, sir.
Q. And its situation?
A. Yes, sir.
Q. How does it lie with reference to the centre of the village?
A. It is one of the centres—five corners. It is one of the main corners.
Q. Near the navy yard?
A. Somewheres in that direction; yes, sir.
Q. What was its value in 1871, '2, and '3, when the widening——
A. That is rather beyond my time.
Q. Property has depreciated some since then?
A. Yes, sir; I should say that it had.
Q. Do you know the property that was sold to Mr. Criqui a few days ago—short time since?
A. I don't think it was sold to Mr. Criqui.
Q. Wasn't it?
A. I bought it myself, I suppose.
Q. Have you bought property recently near this?
A. I expect I have, if the man will do as he agrees to.
Q. You have agreed to buy?
A. Yes, sir.
Q. What property is it?
A. Corner of Union avenue and Springfield avenue—old Eaton property.

Q. How far from this property?
A. Right across the street.
93 Q. On the other side of the avenue?
A. Yes, sir; across Clinton avenue.
Q. How does that compare in situation and value with this?
A. Better than the other; it is square on the corner.
Q. The shape is a little better?
A. Yes, sir.
Q. What is the price of that?
A. Four thousand dollars.
Q. Comparing the two together, making allowances for conditions and advantages in the Headley property, what would you say was the value of the Headley property as compared with that?
A. About $3,000; I wouldn't want to give any more than that for it; I prefer to give a thousand more for the other.
Q. What advantages has the property in question over the Headley property that you speak of?
A. Over the other corner?
Q. No; what advantages for business purposes has it?
A. It is the main point; right on the corner; can't escape it coming or going.

Cross-examination by Judge FORT:

Q. What is your business, Mr. Drake?
A. Ice.
Q. And you are not a real-estate agent?
A. No, sir.
Q. Own any property in Irvington?
A. Yes, sir.
Q. Do you know what the road-board assessment is against this property?
A. Yes, sir.
Q. How much?
A. $1,142.
Q. The last witness that was on the stand gave it as his judgment, how is it as to your judgment, that this property in question, the Headley property, for some reasons would be disadvantageous to certain kinds of business on account of the dust. Is that so?
94 A. Yes, sir.
Q. How is that so?
A. Because in the summer the winds principally are from the west, that street heading right towards the property—blows that way constantly.
Q. Whirls there?
A. It is a bad spot for dust there.
Q. There is a long strip of Telford road that comes down?
A. Yes, sir; but still that can be overcome by watering.
Q. Are there sales of real estate in Irvington at very advantageous prices now?
A. Well, no; I can't say "advantageous prices," but it is moving slowly; there has been two or three sales there recently.

Q. Your estimate of $3,000 is founded upon what, Mr. Drake, for the value of that property?

A. From the value of other property surrounding it, in my judgment.

Q. You know the hotel property?

A. Yes, sir.

Q. What did that sell for?

A. Four thousand five hundred dollars.

Q. Now, then, as to the two properties, do you think this is worth $3,000 if that is worth $4,500?

A. The other is worth more money.

Q. Did the hotel property sell within a year?

A. Within a month.

Q. As to the two properties right there adjacent, founding your judgment on the selling price of that property, is this other property worth $3,000?

A. Taking that sale, no, sir; I don't know, considering that was big price for it.

Q. No; you considered that was not a big price for it?

A. No, sir.

Q. Sold for that amount?

A. You couldn't put the buildings there for that money.

95 Q. You know the Morrow property?

A. Samuel Morrow?

Q. Yes.

A. Yes, sir.

Q. As between those two properties, if the Morrow property was sold for $6,000, would you consider that the Headley property was worth $3,000 in comparison to it?

A. Yes, sir.

Q. Only $3,000 difference between those two properties, buildings and all?

A. There is not $3,000 difference.

Q. There is not?

A. No, sir.

Q. Do you know property lately bought by Hedden—where he lives?

A. About a year ago?

Q. Yes; where his butcher shop is.

A. No; that is my property.

Q. Which, in your judgment, is the more valuable property, the Hedden property or the Headley property?

A. No comparison at all; one is for business purposes and the other is nothing but a dwelling—small affair at that, situated away back from the street—a small lot.

Q. You consider the Headley property the most valuable property without any buildings?

A. Certainly.

Q. Even in the present situation?

A. Yes, sir.

Redirect examination:

Q. What was the nature of the sale of the hotel property—forced or private sale?

A. Private sale.

Q. Hotel business is not profitable in Irvington, is it?

A. Not at present in that stand; no, sir.

96 Q. Is the property that you purchased opposite the Headley property exposed to the winds?

A. Not much; no, sir.

Q. What sales have you known within one year past in Irvington?

A. Well, there was one about a month ago—or three or four weeks ago—to John Criqui, one hundred feet on Union avenue, a thousand dollars.

Recross-examination:

Q. One hundred feet front?

A. Yes, sir.

Q. By how deep?

A. One hundred and seventy-five feet.

Redirect examination:

Q. How does that compare in situation and value—that location as to this?

A. It is, in fact, hardly a comparison at all; one is for private residence and the other for a coal yard or some public business.

Q. And more valuable on that account?

A. Yes, sir; it is the best spot in town, by all odds.

Q. Do you know the Eaton property?

A. Yes, sir.

Q. What is the value of that?

A. It is the one opposite on the other corner.

Q. That property you bought?

A. I expect I have, if they fulfil their agreement.

Q. You paid how much?

A. Four thousand.

Q. Buildings on it?

A. Only one old house.

Q. What is it worth?

A. About $500.

Q. Then the price you were to pay was the price almost altogether for the land?

A. That is all I considered it.

97 Recross-examination:

Q. What size strip of land is that?

A. Ninety feet on Clinton avenue by one hundred and thirty some odd on Union.

Q. It is nearly square then; there is no point to that?

A. No point.

Redirect examination:

Q. In your estimate of the value of the Headley property you take into account the disadvantages of its shape, &c.?
A. I did; yes, sir.

DAVID S. SMITH, a witness produced on the part of the aforesaid respondent, having been duly sworn, on his oath, according to law, deposeth and saith:

Direct examination by Mr. TAYLOR:

Q. You are a practicing physician, are you not, in Irvington?
A. Yes, sir.
Q. A member of the board of freeholders?
A. Yes, sir.
Q. How long have you lived in Irvington and practiced there?
A. I have lived in Irvington and practiced there about twenty-six years.
Q. Were you administrator of John Crawford?
A. I was.
Q. Did you make the sale of his property that had been assessed by the road board for this improvement?
A. Yes, sir.
Q. Was it a private or a forced sale?
A. It was a forced sale, sir, and adjourned two or three times before we did sell in consequence of not getting any purchasers in the first place.
98 Q. Sold free of incumbrances?
A. No, sir; the property was sold this wise: subject to all assessments, township tax, corporation tax, which is included in the township, and road-board tax, and interest on mortgages that was on the property. His right and interest in the property was all that was sold. Yes, sir; subject to all those.
Q. What was the price it brought?
A. Well, I don't recollect now, sir. I could ascertain the price, perhaps. If I had known of this testimony I could have given you the exact amount.
Q. Do you know the property in question, called the Headley property?
A. Yes, sir.
Q. And its situation and shape?
A. Yes, sir.
Q. And I suppose you know generally the value of property in Irvington?
A. Well, some parts of it I do. I don't take much notice of real-estate transactions going on.
Q. Do you know something of the value of property?
A. Yes, sir.
Q. What, in your judgment, is the value of the Headley property now?
A. Well, I am unable to say in regard to that. It depends en-

tirely whether the person wanted to use it or whether you wanted to buy it for investment, but I should think it was very cheap property at $2,000.

Q. What would you say that same property was worth in 1872 or 1873, when the improvement was made?

A. In 1872 or 1873, when the improvement was made, my impression is that that property was rated then at some $10,000.

Q. Has a state of depression come about property there since?

A. Yes, sir. I think that Mr. Headley, at the day of the sale of the corner house and of an old barn that stood on the line of the road that was condemned, I think he was expressing himself
99 then at that time that he would have his property destroyed, and that he wished he had sold it; he had been offered $10,000 or more for it.

Q. Did that include more property than what is now included?

A. Only what the road board had taken. They also took an angle off a stone house that was on the corner.

Q. Allowing for the building removed and the land taken for the improvement, how much, assuming it was worth $10,000 then—how much would the value be diminished by the changes that took place in the removal of the buildings?

A. Well, I don't know as I could give an estimate. There was a large stone house there that has been removed, and the valuation of that house I couldn't give. It was an old house, not valuable anything more than for the stone, because the internal structure of the house was bad.

Q. Dilapidated somewhat?

A. Yes, sir; and hardly tenantable at that time.

By Judge FORT:

Q. You are one of the freeholders that constitute the road board, also?

A. Yes, sir.

Further redirect examination:

Q. How long have you been a member of the road board?

A. I have been a member of the road board, sir—I think I was appointed the 15th of last May.

Q. That circumstance does not affect your judgment in regard to the value?

A. No; I don't know as it does; but under the circumstances I would feel a delicacy about expressing myself as freely as I would otherwise. If I was not engaged in the road board I might put altogether a different valuation on that property from what I am doing now.

Q. Would it be higher or lower?

A. Higher.

100 ELIAS O. DOREMUS, a witness produced on the part of the aforesaid respondents, having been duly sworn on his oath according to law, deposeth and saith:

Direct examination by Mr. TAYLOR:

Q. You are one of the assessors, I believe, that made the assessment complained of as exorbitant in this matter?

A. Yes, sir.

Q. In the course of your duties as one of the assessors do you make it a point to ascertain generally the value of the property assessed with a view to ascertain what would be a proper amount to put upon it by way of assessment?

A. We did, sir. We gave that particular property, I recollect, a great deal of attention.

Q. You remember the property?

A. Yes, sir.

Q. The shape of it?

A. I remember it as a triangular piece of property on the corner.

Q. What, in your judgment, was the value of that property at that time?

A. I don't recollect what we valued it at as a whole. I recollect our method of fixing the value. We arrived at a general conclusion with those corner properties there. My recollection is that we made an estimate after the examination of witnesses and had obtained all the evidence we could in regard to the value. We decided that those three or four corner properties in the centre of the village, where they front on the avenues, were worth $50 per foot front for the land, assuming it to be one hundred feet deep; and in order to arrive at that with this particular property we reduced it to square feet and divided it in that way, and the basis of assessment and damages was made upon a basis of $50 per foot front, one hundred feet in depth.

Q. Was this property assessed in proportion to benefits and its relative value, the same as the others?

A. Yes, sir.

101 Q. As to the amount of the assessment upon this particular piece of property as compared with its value and to the benefit it received from the improvement, what have you to say?

A. I don't know as I understand fully the scope of the question.

Question read.

A. Well, at the time we gave it a great deal of careful consideration and we assessed it at what we found to be the actual benefit it had received from the improvement.

Q. Do you know who was the owner then?

A. I think his name was Caleb Headley.

Q. Did he make any complaint against the amount?

A. He complained against the amount that was awarded him. My impression is he complained against the benefits also. I don't recollect distinctly.

Q. Did he make any estimate of the value of the property himself?

A. He did, sir.

Q. Do you remember what it was?

A. Well, it is my impression that he valued the property at about $15,000.

Q. As it originally stood?

A. As it stood at that time.

Q. Well, with the portion taken by the road board cut off and the changes in the buildings, how much, in your judgment, would that valuation be diminished?

A. We allowed him for damages about $6,000—damage to the property. I was commissioner on both sides—that is, for the benefits and damages.

102 NATHANIEL DRAKE, a witness produced on the part of the aforesaid respondents, having been duly sworn on his oath according to law, deposeth and saith:

Direct examination by Mr. TAYLOR:

Q. You live in Irvington?

A. Yes, sir.

Q. Are you any relation to the other Drakes?

A. Yes, sir.

Q. What relation?

A. Son of one and brother of the other.

Q. You ought to know something about this property, then?

A. Well, a little; not much.

Q. How long have you known the property called the Headley property?

A. About ten years.

Q. Have you known of any sales around there?

A. Nothing but this Criqui sale and the sale of the hotel, and that is only from hearsay.

Q. The Criqui sale you know of and the sale of the hotel?

A. Only from hearsay; still, I suppose, that is pretty correct; the man's father-in-law that bought it, he told us about it.

Q. You know of the purchases by your brother?

A. Yes, sir.

Q. Do you know of the purchase of the property across the way from this that he spoke of in his testimony?

A. Yes, sir.

Q. Well, what is your general judgment in regard to the value of the Headley property as it is now?

A. Well, I should think $2,000 is a fair valuation of it.

Q. Has property depreciated very much in Irvington during the last seven or eight or ten years?

A. Yes, sir.

Q. What per cent.?

A. Well, that I would hardly be able to say.

103 Q. Do you know what the value of this property was in 1870 or about ten years ago?

A. No, sir.

Cross-examination by Judge FORT:

Q. What age are you?

A. I am twenty-six years old.

Q. What is your business?

A. Feed business.

Q. Did you ever carry on the feed business on this property?

A. No, sir.

Q. Did your father?

A. Yes, sir.

Q. That is, on the Headley property?

A. Yes, sir; on the corner.

Q. That was just about the time Mr. Skinkle bought it?

A. Well, no. My brother had the business at that time. Father had it previous to that.

Q. Any objections to this point as a business point? Was there at any time on account of anything whatever?

A. Not for our business.

Q. Wasn't it ever for your business? Wasn't it an objection of your brother's that it was such a dusty place?

A. There might be some unpleasantness in that regard, but then it is no damage to the business.

Q. Unpleasant for persons to carry on business there because of that fact?

A. Yes, sir.

Redirect examination:

Q. And because of its exposure and prominent position?

A. Yes, sir.

Q. Wouldn't that very fact make it advantageous?

A. It was advantageous for business on account of its easy access of travel, you know.

104 Q. How long did your father and brother together carry on business there?

A. I think they were on that corner in the neighborhood of five years.

Q. Do you know whether they found it a fair advantageous situation for business?

A. Yes, sir. I think it was.

By Judge FORT:

Q. For that kind of business?

A. Yes, sir.

Further redirect:

Q. A good many other kinds of business could be carried on there?

A. Yes, sir. Just as good, probably.

Q. It might not be a good place for a merchant tailor?
A. No, sir. I should think not.

By Judge FORT:

Q. Nor a grocery store?
A. No, sir.
Q. Nor a meat store?
A. No, sir.

Further redirect:

Q. Good for feed business and coal business?
A. Yes, sir.
Q. Good for many other kinds of business?
A. Yes, sir. I think it might be used for other businesses.
Q. The situation itself is somewhat of an advertisement, isn't it?
A. Yes, sir.

By Judge FORT:

Q. Is there any coal yard in Irvington?
A. Yes, sir; there are two.

105 JOHN CRIQUI, a witness produced on the part of the aforesaid respondents, having been duly sworn on his oath according to law, deposeth and saith:

Direct examination by Mr. TAYLOR:

Q. You live in Irvington?
A. I do.
Q. How long have you lived there?
A. I have lived there going on fourteen years.
Q. Own property there?
A. I do.
Q. Have you bought any property there lately?
A. I have.
Q. Do you know the property called the Headley property, on the corner?
A. I do.
Q. Do you know the shape of it and the situation?
A. Yes, sir; except the number of feet on both avenues; but then I know the condition of the property and the situation of it.
Q. You see it every day?
A. I do.
Q. What, in your judgment, is the value of it?
A. I should consider the fair valuation of that property $2,500.
Q. What property have you bought recently in Irvington?
A. I bought some on Union avenue.
Q. How recently?
A. About a week ago.
Q. How much did you pay for it?
A. I paid $9.50 a foot.
Q. How many feet?

A. One hundred feet.
Q. Nine hundred and fifty dollars?
A. Yes, sir.
Q. How far is the property you bought from the Headley property?
A. I should judge the distance from there is in the neighborhood of one thousand feet.
106 Q. Do you know the value of the Headley property as it was when the improvement was first made in 1873 or thereabouts?
A. Not particularly, myself; I don't know as I have any idea.

Cross-examination by Judge FORT:

Q. This property—the Headley property—then, in your judgment, is very much more valuable than the property you bought?
A. I should say it was, lying on an avenue and mine lying on a side street.
Q. You mean if it was the same style of property yours was it would be worth more—that is, if it was the same depth and the same running feet?
A. Worth more. I consider property on Springfield avenue worth more than if it was on Union avenue. If the property was the same depth on Springfield avenue that I have on Union avenue I should consider it worth a great deal more.
Q. Take the shape and style of the Headley property for building purposes, is it worth any more than property situated as yours is on Union avenue?
A. It is, for good many reasons: it is located in the centre; it is handy for the horse cars; and more so for business purposes.
Q. Not for residence?
A. It would rent there a good deal easier than it would where I am.
Q. That is, if the property laid so it could be built on?
A. If it laid so you could build on it.

Redirect examination:

Q. It is large enough to build on, isn't it?
A. I should think it was if it is two hundred feet front on both avenues.

Counsel on both sides declare the testimony closed and agree to argue the matter as soon as Judge Depue will hear it.

107 Essex Circuit Court.

JACOB SKINKLE, Petitioner,
and
THE ESSEX PUBLIC ROAD BOARD, Respondent. } On Petition, &c.

The questions of law arising in the foregoing case and reserved for review are the following, viz:
1. Whether the Legislature can take from a municipal corpora-

tion property it is entitled to hold, except as an exercise of the right of eminent domain and for a public use, and whether the act entitled "An act to authorize the compromising or settling by arbitration of any tax or assessment laid by any public road board in the State" is in this respect unconstitutional.

2. Whether a mortgagee who has bought the property covered by his mortgage can apply under the provisions of said act.

3. Whether the said act is so imperfect in the matter of provision for a mode or principle to govern the arbitrators when appointed as not to be capable of being carried out.

4. Whether the act is retrospective as regards property sold before it was passed.

5. What considerations are to guide the judge in deciding whether it is a proper case for arbitration.

Being in doubt as to the foregoing questions of law, I have
108 caused the foregoing case to be made and stated, and I do hereby certify the same to be argued before the bar of the supreme court for its advisory opinion on said questions.

DAVID A. DEPUE, *J. S. C.*

Statements of Assessments Against Property Referred to in the Petition; and Concerning which Arbitration is Desired.

The property of Caleb B. Headley, corner of Springfield and Clinton avenues, Irvington, was assessed for the opening, &c., of Springfield avenue April 21, 1873, $940.00.

Said property was sold for non-payment of assessment December 26, 1876, for $1,144.40.

Interest from date of sale at 15 per cent.

Same property assessed for change of grade October 7, 1878, $104.40.

Sold for non-payment Sept. 5, 1881, for $134.81.

Interest from date of sale at 15 per cent.

Assessment for paving extra width, $890.74, October 13, 1873.

For this assessment property not yet sold.

109 New Jersey Supreme Court. February Term, 1885.

JACOB SKINKLE, Petitioner,
vs.
THE ESSEX PUBLIC ROAD BOARD, Respondent. } Opinion.

Argued before justices Van Syckel and Knapp; J. Frank Fort, Esq., for petitioner; John W. Taylor, Esq., for respondent.

The opinion of the court was delivered by VAN SYCKEL, *J.*:

Under the laws relating to the Essex Public Road Board the property of Caleb B. Headley was assessed for benefits by the laying out and widening of Springfield avenue.

In December, 1876, the said property was sold for the non-payment of said assessment to the said road board for the term of fifty years.

The sale to the respondent was made by virtue of a supplement to its act of incorporation, approved March 31, 1875 (Laws, page 420), providing for a sale for fifty years, and that the lands so sold "may be held and sold, assigned, and disposed of by said board for the use of the county, with all the rights and privileges of a purchaser at such sale and subject to the same conditions and limitations."

The petitioner, at the time said assessment was made upon the said premises, held a mortgage thereon and subsequently became the purchaser of the premises under said mortgage.

110 An act was passed March 31, 1882 (Laws, p. 256), entitled "An act to authorize the compromising or settling by arbitration of any tax or assessment laid by any public road board in this State."

Under this act Skinkle applied for the appointment by a justice of the supreme court of three arbitrators to settle and adjust the matter in difference between the petitioner and the respondent relative to the assessment aforesaid.

The following questions were thereupon submitted for the opinion of the supreme court:

1. Whether the Legislature can take from a municipal corporation property it is entitled to hold, except as an exercise of the right of eminent domain and for a public use, and whether the act entitled "An act to authorize the compromising or settling by arbitration of any tax or assessment laid by any public road board in the State" is in this respect unconstitutional.

2. Whether a mortgagee who has bought the property covered by his mortgage can apply under the provisions of said act.

3. Whether the said act is so imperfect in the matter of provision for a mode or principle to govern the arbitrators, when appointed, as not to be capable of being carried out.

4. Whether the act is retrospective as regards property sold before it was passed.

5. What considerations are to guide the judge in deciding whether it is a proper case for abitration.

1. Does the act of March 31st, 1882, authorizing a settlement by arbitration, illegally interfere with vested rights?

The right of property which inheres in the road board is derived exclusively from the sale and purchase of lands for a term of years for non-payment of assessments imposed for the purpose of projected improvements within the limits of the road board district.

The Dartmouth College case is cited in support of the proposition that the legislation in question impairs the obligation of contracts.

111 Dartmouth College was a private eleemosynary institution, endowed with a capacity to take property for objects unconnected with the Government, and its funds were bestowed by individuals on the faith of its charter. The corporation was not invested with political power, and took no part in the administration of local government. The decision of that case turned on the character of

the incorporation, whether public or private. The Court held that it was to be regarded, when looking at the power of the State over it, as a private corporation, such as a bank or manufacturing company.

Hence it was that the hostile legislation was held to be inhibited by the constitutional protection of contracts.

Strictly public or municipal bodies exercising powers of local government for the population within their boundaries have not been held to be within this rule.

Darlington *vs.* Mayor of New York, 31 N. Y., 164.

The cases draw a distinction as to property rights of a strictly private character vested in municipal corporations.

If such corporation has power to hold devises and legacies to charitable uses, the Legislature cannot seize and appropriate them to other purposes.

But even in such a case the Legislature could deprive the public body of the capacity to act as trustee, in which event equity would substitute a trustee to perpetuate the trust.

This course was pursued by the Vermont court in Montpelier *vs.* East Montpelier, 29 Vermont, 12, where the municipal corporation held, as trustee, property donated to private uses.

There is another class of cases recognizing in public corporations a vested right in their city halls, markets, water works, fences, and other like property, as to which it is affirmed that they stand on the same ground of exemption from legislative control and interference as a private corporation.

Atkyns *vs.* Town of Randolph, 31 Vt., 226.
Grogan *vs.* San Francisco, 18 Cal., 590.
Benson *vs.* New York, 10 Barb., 245.

112 Upon general principles immunity from legislative control over such property must be conceded to the extent which will prohibit the law-maker from divesting the title for the purpose of devoting it to private uses or diverting it to the support or benefit of other municipal bodies.

Giving the fullest recognition to the authority of these cases, they do not, in my judgment, control this controversy.

Stating the question in its widest form, it will be whether property purchased by a political body for unpaid taxes, laid to enable it to exercise its granted functions of government, passed beyond legislative control, save through the exercise of the power of eminent domain.

As against the State there can be no vested right in the granted power to tax or to the taxes after they are assessed.

The right to repeal such laws at any stage of the proceedings for their enforcement has the fullest recognition.

Belvidere *vs.* Warren R. R., 5 Vr., 193.
Same case, 6 Vr., 584.

There is no restraint upon the power of legislation to control and modify the method of taxation and its collection, or to reduce or

altogether extinguish an assessment laid, provided the law is uniform and general in its application, and in its operation coextensive with the limits of the political bodies to which it relates.

The road board is charged with the construction of a public work, and is furnished with the requisite fund for its execution by taxation of a class of individuals.

Acting as an agency of the State and for its benefit, what constitutional guarantee can place either the work itself or this fund without the control of legislation, or what can deprive the sovereign of the power to provide for restitution if it shall be considered that an excessive burden has been cast upon this class of tax-payers?

It is true that the assessments, when collected, could not be
113 appropriated to a scheme other than that they were levied to promote, for the supposed benefits to be derived from the work constitute the only equivalent received by the land-owners upon whom the special burden is cast.

I think it is equally clear that even after the assessments are collected the Legislature may abolish the project for improvement, extinguish the road board, and refund the collected taxes to those from whom they were exacted.

But, attributing to this legislation the purpose for which, in my judgment, it was framed, a still narrower question is presented.

The act directs that the arbitrators shall be sworn; that they shall within ten days thereafter view the land and real estate upon which the assessments are laid, and after such view shall notify all parties in interest of the time they will hear testimony in relation to the matters referred to them, and, after hearing all parties and witnesses and taking into consideration all taxes, assessments, and impositions of every nature whatsoever and of the value of the land and real estate in proportion to the taxes and assessments against the same, shall proceed to fix and adjust a specific sum or amount to be paid by the owner or mortgagee in full settlement and discharge of the tax or taxes, assessments or assessment, levied or imposed by any public road board upon the real estate described in the petition under which the arbitrators are appointed.

This legislation must be read in connection with the provisions of the road-board act prescribing the principle upon which said assessments and impositions were to be made.

That act prescribes that assessments shall be made in proportion to and not in excess of the benefits conferred by the improvement.

We have, then, a commission whose duty it is to ascertain and fix what sum the land-owner shall pay in discharge of assessments upon his land which ought originally to have been laid ac-
114 cording to benefits. It must be presumed that the Legislature intended that the review should be conducted in conformity with this established legal rule and not in an arbitrary manner.

The act authorizes "the compromise or settling by arbitration of any assessment made by the road board."

Arbitrators must regard the legal rights of parties. The right of the road board is to levy and collect the assessment in proportion to

benefits. The right of the land-owner is to have the imposed burden limited in extent to the resulting benefit.

Thus considered, it is indicated with sufficient clearness that the arbitrators are to make a just estimate in proportion to the benefits conferred. That rule is still dominant and is to be the guide.

They are to view the lands of the petitioner, to consider their value, and the aggregate of all the assessments against them, and thus they will be enabled to say, and they must say, what sum represents the burden which may be legally imposed according to benefits conferred. Those who made the assessments originally estimated what they supposed would prove to be the resulting benefits.

Imperfection in human judgment has doubtless led to erroneous conclusions. These arbitrators should do what experience will show the first assessors should have done.

They will have the benefit of hindsight, which is always better than foresight.

I think the law will bear this interpretation, and it should be adopted, because it supports the action of the Legislature in this respect.

In this view of the act its effect and scope is to give an appeal to the land-owner in a case where the judgment against him would otherwise be final. Restoration to the injured party by the judgment of the tribunal established by this law of the sum taken from him in excess of the benefits conferred cannot constitute an illegal taking of property from the road board. In such legislation there is no infirmity.

Is the act retrospective as regards property sold before it
115 was passed? The act applies in terms to any "assessment or assessments that may have been or may hereafter be laid or imposed," and the proviso of the third section is this:

"Provided, however, that provisions of this act shall not apply to cases where the land and real estate has been sold for assessments and bought therefor by a *bona fide* purchaser other than such public road board or its representatives."

This language clearly gives the act a retrospective effect. The exclusion from its operation of those cases where lands are sold to others than the road board involves the inclusion of purchases made by the said board.

Is the mortgagee, who has bought the property covered by his mortgage, entitled to apply under the provisions of the act?

The first section of the act provides that it shall be lawful for the road board to adjust and compromise any assessment that may have or may hereafter be laid by virtue of the power conferred on said road board with the owner or mortgagee of lands which may have been or may thereafter be assessed for benefits.

The second section provides that in case of an application by any owner or mortgagee for an adjustment and compromise and of failure of agreement between the road board and applicant the said owner or mortgagee may apply for the appointment of arbitrators.

If the act relates to the time when the assessment was laid the

relator was mortgagee; if it refers to the time when application is made he was owner.

In either case he is entitled to the benefit of this legislation. It is suggested that under the foreclosure proceedings the mortgagee purchased the land *com onere*, and that if the assessment is now diminished he gains an unfair advantage. What proportion of the mortgage debt the land subject to the assessment is of sufficient value to satisfy this court cannot make a subject of inquiry.

116 It must be considered, however, that the mortgagee purchased the premises with the knowledge, which all persons are presumed to have had, that he had a right to apply under the act of 1882 for relief from the imposition in so far as it was excessive. In that view of the case the probability that the assessment would be reduced would tend to increase the sum bid for the property at the mortgage sale.

There is manifest justice in preserving the rights of the mortgagee over whose mortgage an assessment for benefits, subsequent in time, is advanced in order of priority.

This question is answered affirmatively.

What considerations are to guide the judge in deciding whether it is a proper case for arbitration remains to be answered.

The act requires the owner or mortgagee to give notice to the road board of this intended application. When the application is presented it is made the duty of the judge to determine whether it is a proper case for arbitration. That duty cannot be intelligently discharged without the presentation to him of such facts, duly verified, as will show that the petitioner is entitled to relief. It must, therefore, be implied that the burden falls on the applicant to bring such facts to the consideration of the judge as will enable him to exercise a discretion. The object of the act is to give relief to the petitioner from an assessment in excess of the benefits conferred upon him. The review which he instituted by his application is for his exclusive benefit, and does not affect the prior proceedings so far as they relate to others. The sole question will be whether he is burdened in excess of his benefits.

To entitle him to a review he must make a *prima facie* case to that effect.

117 New Jersey Supreme Court. February Term, 1886.

JACOB SKINKLE *vs.* ESSEX PUBLIC ROAD BOARD. } On Case Certified. Advisory Rule.

Certain questions in above cause having been certified to the bar of this court by the Hon. David A. Depue, one of the justices thereof, holding the circuit — for Essex county, for argument, *and* the court, having heard J. Frank Fort, Esquire, counsel of the petitioner, and John W. Taylor, Esquire, counsel of the respondents, and having considered the matters so certified for its advisory opinion aforesaid, do hereby, on this fifth day of December, eighteen hundred and

eighty-five, order and direct that the opinion given in this case shall be certified to the said circuit court of the county of Essex for judgment therein or proceedings thereunder in conformity therewith.

Let this rule be entered.

B. VAN SYCKEL,
Jus. Sup. Ct.

Entered February 24, 1886, on motion of John W. Taylor.

118 Circuit Court of Essex County.

JACOB SKINKLE, Petitioner,
vs.
ESSEX PUBLIC ROAD BOARD, Respondents.
} Order Appointing Arbitrators.

It appearing to the court by petition, duly verified, filed in the above-entitled cause pursuant to the provisions of an act of the Legislature of this State entitled "An act to authorize the compromising or settlement by arbitration of any tax or assessment laid by any public road board in this State," approved March 31, 1882, that the above-named petitioner is the owner of certain lands and real estate in said petition fully described, and that said lands are assessed for certain public improvements mentioned, the amounts and character of which are in said petition fully set forth; and it further appearing that said petitioner has applied to the respondents for a compromise and adjustment of said assessments, and that the respondents refused to entertain said compromise or adjustment proposition, and that said petition was presented to the justice of supreme court, holding the circuit for Essex county, after ten days' notice in writing of such intended application, left with the president of the respondents, reciting all the foregoing facts; and it further appearing that at said application to said justice the respondents were represented by counsel and after hearing a rule to show cause was granted and testimony taken thereunder and said testimony, on the return of said rule, was certified to the supreme court upon certain questions for its advisory opinion, which advisory opinion is certified to this court, sustaining the position of the petitioner on all questions so certified; and whereas it appears that the facts
119 recited in said petition are true, and it appearing to the court to be a proper case for arbitration:

I, David A. Depue, justice of the supreme court, holding the circuit court of the county of Essex, do hereby appoint Harrison Van Duyne, Henry N. Parkhurst, and Abram M. Reynolds, three disinterested freeholders, as arbitrators to settle and adjust the matter in difference between Jacob Skinkle, the petitioner, and the Essex Public Road Board, the respondents, relative to such tax or taxes, assessment or assessments, in the petitioner's petition mentioned.

And it is ordered that said arbitrators take the oath as required by said act and, within ten days after their appointment and the subscribing of the oath, view the land and real estate in the petition recited upon which said tax or taxes, assessment or assessments, are laid, and proceed according to said act to hear all parties and their

witnesses and fix and adjust, in the manner and within the time provided by said act, a sum or amount to be paid by the petitioner in full settlement and discharge of said tax or taxes, assessment or assessments, levied or imposed by the Essex Public Road Board against or upon the land and real estate of the petitioner particularly mentioned and described in the petition, and make up and present their final report in writing to the court, signed by a majority of them, within sixty days from the date hereof.

Dated December 3d, 1885.

DAVID A. DEPUE, *J. S. C.*

120 Essex County Circuit Court.

JACOB SKINKLE, Petitioner,
and
THE ESSEX PUBLIC ROAD BOARD, Respondents. } On Petition, &c.

Oath of Arbitrator.

STATE OF NEW JERSEY, *Essex County,* } *ss:*

Henry N. Parkhurst, one of the arbitrators appointed by the Honorable David A. Depue, justice of the supreme court, holding the circuit for Essex county, in the above-entitled cause, being duly sworn, doth hereby make oath and say that I will faithfully perform the duties and trust reposed in me as such arbitrator in the matters in difference between the above-named petitioner and said Essex Public Road Board as if recited in the petitioner's petition.

HENRY N. PARKHURST.

Sworn and subscribed before me, the county clerk of Essex county, this fifth day of December, A. D. 1885.

J. WARREN VANDERVEER,
County Clerk.

121 Essex County Circuit Court.

JACOB SKINKLE, Petitioner,
and
THE ESSEX PUBLIC ROAD BOARD, Respondents. } On Petition, &c.

Oath of Arbitrator.

STATE OF NEW JERSEY, *Essex County,* } *ss:*

Abram M. Reynolds, one of the arbitrators appointed by the honorable David A. Depue, justice of the supreme court, holding the circuit for Essex county, in the above-entitled cause, being duly sworn, doth hereby make oath and say that I will faithfully perform the duties and trust reposed in me as such arbitrator in the matters in difference between the above-named petitioner and said Essex Public Road Board as if recited in the petitioner's petition.

A. M. REYNOLDS.

Sworn and subscribed before me, the county clerk of Essex county, this fifth day of December, A. D. 1885.

J. WARREN VANDERVEER,
County Clerk.

122 Essex County Circuit Court.

JACOB SKINKLE, Petitioner,
and
THE ESSEX PUBLIC ROAD BOARD, Respondents. } On Petition, &c.

Oath of Arbitrator.

STATE OF NEW JERSEY, *Essex County*, } *ss.:*

Harrison Van Duyne, one of the arbitrators appointed by the Honorable David A. Depue, justice of the supreme court, holding the circuit for Essex county, in the above-entitled cause, being duly sworn, doth hereby make oath and say that I will faithfully perform the duties and trust reposed in me as such arbitrator in the matters in difference between the above-named petitioner and said Essex Public Road Board as if recited in the petitioner's petition.

HARRISON VAN DUYNE.

Sworn and subscribed before me, the county clerk of Essex county, this fifth day of December, A. D. 1885.

J. WARREN VANDERVEER,
County Clerk.

123 Essex County Circuit Court.

JACOB SKINKLE, Petitioner,
and
THE ESSEX PUBLIC ROAD BOARD, Respondents. } On Petition. Notice to Parties to Appear Before Arbitrators.

To Jacob Skinkle, above-named petitioner; The Essex Public Road Board, above-named respondents, and all parties in interest:

Take notice that the undersigned arbitrators, appointed by his honor David A. Depue, justice of the supreme court, under the petition filed in the above-entitled cause, will sit and hear all parties or their witnesses in relation to the matters referred to them on Thursday, the seventeenth day of December, 1885, at the hour of two o'clock in the afternoon of said day, in the library-room, on the sixth floor of the building number 800 Broad street, in the city of Newark.

Dated December fifth, 1885.

HENRY N. PARKHURST,
A. M. REYNOLDS,
HARRISON VAN DUYNE,
Arbitrators.

124 Essex County Circuit Court.

JACOB SKINKLE, Petitioner,
and
THE ESSEX PUBLIC ROAD BOARD, Respondents. } On Petition, &c.

Consent as to Evidence.

It is hereby consented and agreed that the evidence taken under the rule to show cause in this cause and printed and used in the supreme court on the "case certified from the Essex circuit" may be used by the arbitrators appointed herein as if the same were taken before them on the presentation of the witnesses by the respective parties in interest.

Dated December 24, 1885.

J. FRANK FORT,
Attorney of Petitioner.
JOHN W. TAYLOR,
Attorney of Respondents.

125 Essex County Circuit Court.

JACOB SKINKLE, Petitioner,
and
THE ESSEX PUBLIC ROAD BOARD, Respondents. } Report of Arbitrators.

To the Hon. David A. Depue, justice of the supreme court:

The undersigned arbitrators, appointed by your honor as the justice of the supreme court, holding the circuit of the county of Essex in the above-entitled cause, by an order dated the third day of December, A. D. 1885, respectfully report that we have attended to the duties required of us, and were, on the fifth day of December, A. D. 1885, duly sworn before J. Warren Vanderveer, clerk of the said county of Essex, that we would faithfully perform the duties and trust reposed in us as such arbitrators in the matters in difference between the above-named petitioner and the said Essex Public Road Board, as recited in the petitioner's petition; that within ten days after our said appointment and the subscribing of the said oath we did severally and together view the land and real estate upon which the assessment or assessments in the petitioner's petition are laid or imposed, and that after such view, to wit, by notice dated December 5th, 1885, and signed by us respectively, did notify all the parties in interest that as such arbitrators so appointed by your honor under the petition filed in the above cause we would sit and hear all parties or their witnesses in relation to the matters referred to us on Thursday, the 17th day of December, 1885, at the hour of 2 o'clock in the afternoon of said day, in the library-room, on the sixth floor of the building No. 800 Broad street, in the city of
126 Newark, a copy of which notice, together with the acknowledgments by the respective attorneys of the said respondents and the board of chosen freeholders of the county of Essex and of the petitioner, is hereto annexed and made a part hereof.

In pursuance to said notice we met at the time and place therein mentioned and adjourned the said hearing, at the request and by the consent of both parties, until the 24th day of December, A. D. 1885, at the same time and place; that upon the said last date we met, and, at the request of the parties in interest and by their consent, further adjourned said hearing until Thursday, December 31, 1885, at the same hour and place.

Thereupon, upon the said last day, the said petitioner and said respondents respectively appeared before us, and, by writing signed by the respective counsel of the respective parties in interest, consented and agreed that the evidence heretofore taken in this cause under the rule to show cause made by your honor therein, printed and used in the supreme court on the case certified from the Essex circuit, be used by us as arbitrators appointed as aforesaid as if the same were taken before us by the presentation of witnesses by the respective parties, but no more testimony should be taken before us in the matter, a copy of which said consent and agreement and the evidence therein referred to is hereto annexed; that thereupon we heard John W. Taylor, Esq., on behalf of the said respondents, and J. Frank Fort, Esq., on behalf of the petitioner, and duly considered said evidence, and it being agreed that we should not consider any question as to the taxes levied on the said property by the township of Clinton recited in the petition filed in this cause in making up our sum or estimate of the amount to be paid by the petitioner in settlement and discharge of the assessments levied against the said property, but should only consider the assessments laid by the respondents against the said property, we did thereupon adjourn, to meet on the 2d day of January, A. D. 1886. On that date we did further take into consideration the assess-
127 ments so levied by respondents, of every nature whatsoever, remaining unpaid and of the value of the land and real estate in proportion to the said estimates so laid and imposed against the same, proceeded to fix and adjust a specific sum or amount to be paid by the said petitioner so petitioning in full settlement and discharge of the said several assessments recited in the petitioner's petition filed in this cause and imposed by said public road board, the respondents, against the land and real estate particularly mentioned and described in the petitioner's petition under which we were appointed; and we did thereupon fix and adjust the specific sum or amount to be paid by the said Jacob Skinkle, petitioner aforesaid, in full settlement and discharge of the said assessments and each of them, as stated in the petitioner's petition, at the sum or amount of eight hundred and forty dollars ($840); and we do hereby report and certify that we have so fixed said sum or amount after a careful examination of said land and real estate and said public improvements for which said assessments were laid or imposed and the evidence before us, with a view to charge said property with and to make said assessments conform in amount to the benefits conferred, and do hereby determine that the benefits conferred upon said property by said improvements amount to the said sum of eight hundred and forty dollars ($840) as aforesaid, and do

hereby, in pursuance of the command of the order appointing us made by your honor, make this our final report in writing to your honor as such justice of the supreme court appointing us within sixty days from the date of our said appointment, signed by all of us.

All of which is respectfully submitted.

Dated January 11, 1886.

HARRISON VAN DUYNE.
HENRY N. PARKHURST.
A. M. REYNOLDS.

128 In the Matter of JACOB SKINKLE, Petitioner,
and
THE ESSEX PUBLIC ROAD BOARD.

The following commissioners, Messrs. Harrison Van Duyne, Henry N. Parkhurst, and A. M. Reynolds, having been appointed by Justice David A. Depue in the matter of assessment of The Essex Road Board *vs.* Jacob Skinkle, the commissioners met at the court-house, in the city of Newark, December 5th, 1885, and were duly qualified by the county clerk, and at once organized by appointing Mr. H. Van Duyne chairman and A. M. Reynolds secretary; after organization and consultation adjourned to meet upon the lands under controversy on December 11th, 1885.

IRVINGTON, N. J., *Dec. 11th*, '85.

Commissioners met pursuant to adjournment (all present). After viewing the grounds further adjourned, to meet at the Law Library, in the city of Newark, on December 17th, 1885.

LAW LIBRARY, *Dec. 17th*, 1885.

Commissioners convened pursuant to call (all present), and after consultation, at the request of counsel and for their convenience, postponed the examination in the case until December 24th, 1885.

LAW LIBRARY, *Dec. 24th*, 1885.

Commissioners met pursuant to adjournment (all present), when the printed testimony in the case was presented, read, and discussed, after which the commisioners adjourned to December 31st, 1885, to hear argument of counsel.

LAW LIBRARY, *Dec. 31st*, 1885.

Commissioners met pursuant to adjourment (all present),
129 when counsel fully discussed questions appertaining to matters involved in this case, Judge Fort appearing for Mr. Skinkle and ex-Senator Taylor for the Essex Road Board; after which adjourned, to meet at office of H. N. Parkhurst on January 2d, 1886.

JANUARY 2D, 1886.

The commissioners met pursuant to adjournment (all present). After a full consideration of the case as presented the sum of $840 was unanimously agreed upon as the amount of benefit the prop-

erty of Jacob Skinkle derived from the road-board improvements in question.

Adjourned, to meet January 11th, 1886, at which time the report was agreed upon and signed.

A. M. REYNOLDS, *Sec.*

130 Essex County Circuit Court, City of Newark.

JACOB SKINKLE, Petitioner,
vs.
THE ESSEX PUBLIC ROAD BOARD, Respondents. } On Petition, &c.

The arbitrators heretofore appointed by the court in the above-entitled cause having presented their final report in writing within sixty days after the date of their appointment pursuant to statute—

It is hereby ordered, this thirtieth day of January, 1886, that said report be filed with the clerk of the county of Essex, there to remain of record.

And it is further ordered that the respondents pay the said arbitrators twenty-five dollars each and to the petitioner the sum of one hundred and eleven dollars and fifty cents, taxed costs in the case on the case certified to the supreme court.

DAVID A. DEPUE, *J.*

131 New Jersey Supreme Court.

THE STATE (THE ESSEX PUBLIC ROAD BOARD, Prosecutor)
vs.
JACOB SKINKLE. } Writ of Certiorari.

NEW JERSEY, *ss:*

The State of New Jersey to J. Warren Vanderveer, clerk of the county of Essex, Greeting:

[L. S.] We, being willing to be certified of a certain report of Harrison Van Duyne, Henry N. Parkhurst, and Abraham M. Reynolds, arbitrators appointed by his honor David A. Depue, one of the justices of our supreme court, on the petition of Jacob Skinkle, on the third day of December, eighteen hundred and eighty-five, to settle and adjust the matter in difference between Jacob Skinkle and the Essex Public Road Board concerning certain taxes and assessments in the said petition mentioned, do command you that the said report, petition, and appointment, and all things touching or concerning the same, as fully as they remain before you or in your custody, you do certify and send to our supreme court, to be held at Trenton on the third Tuesday of February next, together with this writ, that therein may be done what of right and according to law ought to be done.

Witness Mercer Beasley, Esq., chief justice of our supreme court, at Trenton, this thirtieth day of January, eighteen hundred and eighty-six.

B. F. LEE, *Cl'k.*

JOHN W. TAYLOR, *Att'y.*

Return.

To the justices of the supreme court of the State of New Jersey:

I, J. Warren Vanderveer, clerk of the county of Essex within named, do hereby certify and return the within-mentioned report, petition, and appointment, with all things touching the same, as I am commanded.

Witness my hand and seal this tenth day of February, A. D. 1886.

J. WARREN VANDERVEER, *Clerk.* [L. S.]

132 New Jersey Supreme Court.

THE STATE (THE ESSEX PUBLIC ROAD BOARD, Prosecutor) *vs.* JACOB SKINKLE. } On Certiorari. Reasons.

The said plaintiff, by John W. Taylor, its attorney, prays that the report and proceedings of the said arbitrators and the order directing the said report to be filed and the payment of costs and arbitrators' fees by the said prosecutor may be reversed, set aside, and for nothing holden for the reasons following, to wit, viz:

1. Because the statute, under color whereof said proceedings were had and said report and order thereon were made, is unconstitutional and void.

2. Because the said proceedings, report, and order were irregular and not in conformity with the statute under color of which they were had and made.

3. Because the said arbitrators, in their proceedings and report, disregarded and violated the provisions of the act constituting the said Essex Public Road Board and the supplements thereto.

4. Because the specific sum or amount fixed by the arbitrators to be paid is not and does not purport to be equal to the whole benefit conferred.

5. Because the said specific sum or amount so fixed is not and does not purport to be in proportion to the benefits conferred.

6. Because the said order directing the payment of costs and fees by the said prosecutor was made without notice to or opportunity to be heard by the prosecutor.

7. Because the said proceedings, report, and order are in divers other respects illegal and unjust.

JOHN W. TAYLOR,
Att'y for Prosecutor.

133 New Jersey Supreme Court. November Term, 1886.

THE STATE (THE ESSEX PUBLIC ROAD BOARD)
vs.
JACOB SKINKLE.
} On Certiorari.

John W. Taylor, Esq., for relator.
J. Frank Fort, Esq., for defendant.

VAN SYCKEL, *J.:*

The subject-matter for review in this case is the report of arbitrators appointed on the application of Jacob Skinkle, the defendant, under the provisions of the act entitled "An act to authorize the compromising or settling by arbitration of any tax or assessment laid by any public road board in this State." Laws, 1882, p. 256.

The relator insists, in the first place, that the arbitrators should have taken into consideration not only the assessments against the defendant, who alone petitioned for the benefit of said act, but also all other assessments for the same improvements imposed by the road board on all the lands assessed therefor.

Does the failure to pursue such a course render the proceedings abortive?

The proceedings under the act *was* instituted by Skinkle for his his own benefit. No other land-owner is interested in it. Every land-owner affected by like assessments may, at his option, institute proceedings under the act for his own exelusive benefit.

134 The estimate and assessment of the arbitrators, in each case in which the benefit of the act is invoked, is conclusive only as to the petitioner under the act and has no effect whatever upon the assessments of other parties. The judgment of arbitrators appointed in one case could not guide or control those appointed in any other case. With the diversity of opinion which would naturally be entertained by different boards of arbitrators, the review in each case of the entire assessment could have but little tendency to preserve the principle of equality and proportion which should mark the original assessment. The magnitude of the labor which would be involved in reviewing and considering each assignment in its entirety would be appalling. There is nothing in the act which indicates a purpose to establish such a scheme.

The third section of the act provides that after the arbitrators are sworn they shall view the land and real estate upon which the tax or taxes, assessment or assessments, is laid or imposed, and after such view shall notify all parties in interest of the time and place when they will hear the parties and their witnesses, and shall, after hearing the parties and taking into consideration all taxes, assessments, and impositions of every nature whatsoever, and of the value of the land and real estate in proportion to the taxes and assessments against the same, proceed to fix and adjust the sum to be paid by the owner or owners so petitioning in full settlement of the tax or taxes, assessment or assessments, levied or imposed by the road board. The only parties to this proceeding are the road board and

Skinkle. The taxes, assessments, and impositions to be considered are those against Skinkle, and the value of his lands and real estate in proportion to the taxes and assessments against them is to estimated, and then the arbitrators are to proceed to fix the sum he is to pay in discharge of such taxes and assessments.

The object of the act of 1882 is to relieve lands when the assessment against them is greater than the accruing benefit. The
135 relief is limited to the party applying for the protection of the act, and to bring himself within it he must show such excess of burden.

Such was the view taken by this court in a cause between the same parties, reported in 18 Vr., 93. The court there said:

"The object of the act is to give relief to the petitioner from an assessment in excess of the benefits conferred upon him. The review which he institutes by his application is for his exclusive benefit, and does not affect the prior proceedings so far as they relate to others. The sole question is whether he is burdened in excess of his benefits. To entitle him to a review he must make a *prima facie* case to that effect."

If the assessments had been fixed by the arbitrators at a sum equal to the full benefit conferred upon Skinkle's lands the road board cannot complain that due proportion between the various land-owners assessed has not been preserved. The consideration of proportion might ease one land-owner and burden another, but in no event could it lead to the laying of an assessment in excess of the benefit conferred. Does the report of the arbitrators show that they have imposed upon Skinkle's lands a burden equal to the benefits?

The language of the court is this:

"We fix the specific sum to be paid by the petitioner at the sum of $840, and we do hereby certify that we have so fixed said sum after a careful examination of said land and said public improvements for which said assessments were laid with a view to charge said property with and to make said assessments conform in amount to the benefits conferred, and do hereby determine that the benefits conferred upon said property by said improvements amount to the said sum of $840."

This language leaves no room to doubt that the assessment fixed by the arbitrators is equal to the entire benefit conferred by the improvement.

In these respects there is no error in the proceedings, nor does any error appear in the order of the judge in regard to costs.

The proceedings below should be approved.

136 New Jersey Supreme Court. November Term, 1886.

JACOB SKINKLE
ads.
THE STATE (THE ESSEX PUBLIC ROAD BOARD). } On Certiorari.

The court, having heard the argument of counsel and inspected

the proceedings and assessment removed by the writ in the cause and duly considered the reasons filed—

It is ordered that said proceedings and assessments be in all things affirmed, with costs to prosecutor.

Entered November 23, 1886.

On motion of—

J. FRANK FORT, *Attorney.*

137 The act entitled "An act to authorize the compromising or settling by arbitration of any tax or assessment laid by any public road board in this State," approved March 31, 1882, is constitutional.

The said act is retrospective in its character.

Either the owner of land or the mortgagee may apply under the act.

A case was made before the justice to whom the application was made which justified him in appointing arbitrators.

The proceedings and report of the arbitrators are legal.

There is no difficulty in carrying out the provisions of said act.

N. J. Court of Errors and Appeals. June Term, 1887.

THE STATE:

THE ESSEX PUBLIC ROAD BOARD, Pl'ffs in Error,
vs.
JACOB SKINKLE, Def't in Error.
} On Error to Supreme Court.

Argued at March term, 1887.

Mr. John W. Taylor, for pl'ffs in error; Mr. J. Frank Fort, *contra.*

138 The opinion of the court was delivered by—

PARKER, *J.:*

To understand the questions involved in this cause it will be necessary to state, somewhat in detail, the legislation on the subject.

"The Essex Public Road Board" was created by an act of the Legislature approved March 31, 1869. The object of the act was to create a body charged with the duty of constructing and maintaining a better class of public carriage roads in the county of Essex.

The fifth section of the act provides for the assessment of damages sustained by owners of lands taken for roads, and also for assessment upon other lands benefited by such roads.

The fifteenth section provides that the assessments laid for benefits shall be and remain liens upon the lands benefited until paid, and where the assessments are not paid authority is given to the board to sell such lands at public sale to any person who will take it for the shortest period of time, not exceeding fifty years, and pay the full amount due on the assessment.

The section last named also enacts that the road board shall give

to the purchaser of the lands a certificate of sale describing the premises so sold and the length of time for which they were purchased, and also contains the further provision that if at the end of three years from the day of sale the lands shall not have been redeemed, the board, upon surrender of said certificate, shall execute and deliver to the purchaser a declaration of sale of said lands, with the provision that the time for redeeming the same shall remain open (notwithstanding the term of three years may have expired) until
the term for which the purchaser agreed to take the same
139 shall be ended.

By a supplement approved March 31, 1875, it was provided that such lands as were not bid off when offered at the original sale or at a resale when the first purchaser failed to comply should be struck off to the road board by its corporate name for the term of fifty years, and that it might be held and sold or assigned and disposed of by said board for the use of the county, with all the rights and privileges of a purchaser at such sale and subject to the same conditions and limitations.

On the 31st day of March, 1882, an act was passed which gives power to compound, adjust, and compromise any tax or assessment which may have been laid or might thereafter be laid by virtue of the powers conferred by the acts concerning the road board between the board and the owner or mortgagee of any land which may have been or thereafter might be taxed or assessed for benefits, and to discharge the land from the lien of such tax or assessment upon payment of the sum agreed upon.

The said last-mentioned act also provides that in case of an application by any owner or mortgagee for an adjustment with the road board of any tax or assessment laid and their failure to agree or in case of neglect or refusal of the board to act upon the application, the owner or mortgagee who made the application to the board for adjustment may petition the justice of the supreme court who holds the circuit court of the county where the land lies for the appointment of arbitrators to settle and adjust the matter in difference between the petitioner and the board.

The third section of the act last mentioned provides that the
said justice of the supreme court, if, in his discretion, he
140 deems it a proper case for arbitration, shall appoint arbitrators, who, after notice and hearing, shall fix and adjust a specific sum to be paid by the owner or mortgagee so petitioning in full settlement and discharge of the tax or assessment, provided that said act shall not apply to cases where the land had been sold for taxes or assessments and bought by a *bona fide* purchaser other than the board or its representative.

The said act also requires that the arbitrators shall report in writing to said justice of the supreme court, who will order it filed with the clerk of the county, and that upon service of a certified copy of such report on the road board, with the tender of the amount named therein, together with interest, to the board, it shall, by its proper officers, receipt the tax or assessment against such land in full and give a release and acquittance of the same from the lien of any such

tax or assessment, and that the said land shall, by operation thereof, be freed, released, and discharged from the lien and encumbrance thereof.

Under the act of 1882 Jacob Skinkle, the defendant in error, presented a petition to the justice of the supreme court who holds the circuit court of Essex county, asking for the appointment of arbitrators to settle and adjust the matter in difference between him and "the Essex Public Road Board" in reference to certain assessments for benefits which had been imposed on certain lands of his under the act incorporating the Essex County Road Board and supplements thereto.

It appears by the petition that the title to the lands on which the assessments for benefits had been laid, at the time they were laid and at the time the improvements were made, stood in the name of
141 Caleb B. Headley, and that the said Jacob Skinkle held a mortgage thereon, and that subsequently, but before the filing of the petition, said Skinkle became the owner thereof by purchase under foreclosure proceedings on his mortgage.

The petition of Skinkle states that he had applied in writing to the road board for an agreement and compromise of the assessments on said land laid for benefits, and that said board had declined to entertain the same.

After presentation of the petition duly verified to the justice, and after testimony had been taken, the said justice certified to the supreme court, for its advisory opinion, a number of questions of law which had been raised before him on the motion to appoint arbitrators. The supreme court heard argument upon the questions which had been certified, and returned to said justice its advisory opinion, in which the legal position of the petitioner on all the questions certified was sustained. Whereupon the justice proceeded under the petition and appointed arbitrators to settle and adjust the matter, and to hear parties and their witnesses, and to fix the sum to be paid by the petitioner in full settlement and discharge of said assessments laid by the Essex Public Road Board upon said land.

The arbitrators reported that they fixed and adjusted a specific sum (naming the amount) to be paid by said Skinkle to the road board in full settlement and discharge of the assessments which had been made on said land in order to make said assessment conform in amount to the benefits conferred upon said property by the improvements. Upon coming in of the report the justice ordered it filed. Then the road board, by writ of certiorari, brought all
142 the proceedings to the supreme court, where it was decided that there was no error.

The writ of error to this court, therefore, brings before us all the questions which were raised before the justice and by him certified as aforesaid, as well as the legality of the action of the arbitrators in fixing the amount to be paid by the petitioner in discharge of the assessments on the land.

Assuming the statute of 1882 to be constitutional, the action of the arbitrators was legal. It conformed to the statute in every respect.

Each land-owner upon whose lands assessments for benefits had been laid, if unable to agree with the road board on a sum by way of adjustment and compromise, had the right to apply for arbitrators. In considering his application the arbitrators were not required to be governed by assessments which had been made, at the instance of the road board, on other lands. The statute requires the arbitrators to view only the land mentioned in the petition upon which the assessment for benefits had been laid, and, after hearing parties and witnesses, to take into consideration assessments on that land, and its value in proportion to the assessments against it, in order to fix and adjust a sum to be paid by the petitioner in full settlement of the lien on that land. The language is too plain to admit of doubt.

It is objected that the specific amount fixed by the arbitrators, in their report in this case, is not and does not purport to be equal to the whole benefit conferred, nor in proportion to the benefit conferred. The express words of the report furnish a sufficient answer to this objection. The following is the language used, viz: "And we do hereby report and certify that we have so fixed said
143 sum or amount after a careful examination of said land and said public improvements for which said assessments were laid and the evidence before us with a view to charge said property with, and to make said assessments conform in amount to, the benefits conferred, and do hereby determine that the benefits conferred upon said property by said improvements amount to the sum of $840 dollars."

The other questions before us for adjudication in this cause are those which were considered and passed upon by the supreme court before the appointment of the arbitrators, and are stated in the advisory opinion of said court before mentioned, to be found in 18 Vr., page 93.

One of these questions is, What considerations are to guide the justice in deciding whether a proper case for arbitration is presented by the petitioner? The supreme court answered the question by holding that the petitioner must present to the justice such facts, duly verified, as show that he is entitled to relief under the act. In this case the petition was accompanied by affidavits sustaining the facts alleged therein. It sets forth that said land had been assessed for benefits for opening and widening Springfield avenue, for extra paving thereon, and for change of grade on said avenue in certain sums which together amounted to $1,935.14, without interest, and that the value of said land was not in excess of $1,500. This made a case, not merely justifying the appointment of arbitrators, but requiring the justice, in the exercise of a reasonable discretion, to appoint them. The petitioner was not required to show more than a *prima facie* case to establish his right to the appointment
144 of arbitrators; but he did more, and proved by the depositions taken on a rule to show cause before the appointment was made that he was entitled to the relief provided by the act.

The plaintiff in error, among other things, denied that the act of 1882 was retrospective in its character in respect to land sold before

the act was passed. The supreme court advised the justice that it was retrospective. This is undoubtedly correct. The express language of the act settles it. The first section reads as follows, viz: "It shall and may be lawful for any public road board to compound, adjust, and compromise any tax or assessment that may have been or may hereafter be laid," &c. The remaining sections, which authorize the appointment of arbitrators and direct the mode of action, also refer to assessments that may have been laid, as well as to those which might thereafter be laid. The proviso at the end of the third section clearly shows that the provisions of the act apply where the land on which the assessment was laid had been sold to the road board, whether sold before or after its passage.

Another inquiry submitted to the supreme court for its advisory opinion was whether a mortgagee who had purchased the property covered by his mortgage could apply for arbitrators. The act of 1882 settles that inquiry by expressly providing that the road board might adjust and settle the assessment with the owner or mortgagee of lands assessed for benefits, and in case of the neglect of the board to entertain the proposition for adjustment or failure to adjust and settle, then that the owner or mortgagee might petition for arbitrators. In this case the petitioner, at the time of the improve-
145 ments, of the assessments therefor, and the sale, was mortgagee of the land in question, and when the application for arbitrators was made he was owner of the land. There is no doubt that the petitioner, whether regarded as owner or mortgagee, was entitled to relief under the act.

Again, there is no imperfection in the act for want of providing a mode or principle to govern the arbitrators. The matter submitted to them for inquiry and settlement is very simple. The petitioner complains that the assessments which had been laid on his land are greater in amount than the benefits to be derived from the improvements, and he prays that the assessments be reduced to a sum equal to the benefits. Proof is taken as to the value and the arbitrators report in accordance with the proofs. If it appear that the land is not worth as much as the amount of the assessments that had been laid upon it it follows that such assessments were erroneous. There is no difficulty in carrying the act of 1882 into effect.

The questions so far considered have been answered upon the hypothesis that the act of March 31, 1882, is constitutional. The plaintiffs in error attack its constitutionality, and this is the important question in the cause, for if that act be invalid all the proceedings under it must fall and the judgment of the supreme court be reversed.

It is said that the title of the act of 1882 embraces more than one object and does express the true true object of the law. The constitutional requirement in this respect is not violated. All parts of the act have proper relation to each other and to the title.
146 State *vs.* Hammer, 13 Vroom, 438; Payne *vs.* Mahon, 15 Vroom, 213.

It is further urged that the act is unconstitutional because it assumes to provide a mode whereby land of the road board may be

taken from it without its consent and by compulsion and coercion transferred to another upon payment of a sum fixed by arbitrators, in the selection of whom the board does not participate. It is argued that such legislation impairs the obligation of contracts, and it is styled in the argument a species of robbery. Before acceding to this position, expressed in such extreme language, it will be well to inquire if the road board ever had any property right in the land for which it held a declaration of sale which was beyond the power of the Legislature to control.

While "the Essex Public Road Board" may be classed under the general head of municipal corporations, the powers with which it is invested are fewer and more restricted than those which municipal corporations usually possess. It may properly be termed a *quasi* corporation whose functions are wholly of a public nature and having corporate powers only for certain specified purposes. Such a corporation is a mere agent employed as part of the machinery of government to aid in carrying on a portion of its affairs of a local nature. It has no property and cannot have, except provided by the law creating it or the supplements thereto. Under the original act it had no power to acquire and hold lands. It had authority only to order sale and transfer to purchasers for the public under and by virtue of unpaid assessments which had been laid for supposed benefits from proposed improvements. In 1875 power
147 was given the board (in case others did not become purchasers) to take a declaration of sale in its corporate name to hold and dispose of for the use of the county. The land did not become the property of the board, but its name was used, for the sake of convenience, as the channel through which the public would pass title to any one who would subsequently purchase. The land was held in the corporate name of the board as the property of the public, subject to the right of redemption during fifty years, and subject also to the control of the Legislature.

Such corporations do not hold property thus intrusted to them as their property under contract, but by virtue of legislation, subject to all changes which the Legislature may make. To constitute a contract there must be two contracting parties. In this case the Government (acting through the Legislature) and the road board were one and the same party. They did not and could not contract with themselves. If there was a contract in the act of 1882 it was between the Government and the land-owner whose land had been assessed for benefits. By that act the Government said to the land-owner, If you think the assessments on your land too high you may apply for relief under its provisions. The land-owner chooses to apply, and the application results in taking off part of the burthen and releasing the land from the lien of the assessment. The Government is bound by the passage of the act to the land-owner who applies, and the land-owner is bound by accepting the act and proceeding under it. These are the only parties interested. The road board, being the mere agent of one of the contracting parties, has no right to intervene as an obstructionist and raise the ques-
148 tion of alleged violation of the obligation of contracts and

the taking of property without compensation. The road board alone complains, and that body has no vested right or interest in the premises, no right which is not subordinate to the action of the Government through the Legislature. The Legislature, which brought "The Essex Public Road Board" into being, has the right to amend the acts affecting it in such manner and to such extent as the public interests may require. The Legislature may even annul all the powers of the road board by repealing the law creating it so long as it does not interfere with individuals who purchase *bona fide* under its provisions.

The act of 1882 was not only constitutional but wise legislation. So long as assessments greater in amount than the value of the land on which they were imposed remained the owner would not redeem, nor could purchasers be found. The consequence was that the public did not receive any part of the assessments. By providing a mode of adjustment between the Government (through its agent, the road board) and the land-owner the public is enabled to obtain a portion of the money by discharging the land from the lien.

The rights of *bona fide* purchasers are not affected by the act. No constitutional right is violated and the public is benefited. When the Legislature found that a mistaken and oppressive policy had been pursued it was not only its right but its duty to furnish a mode of relief. At all events, the road board has not such legal status as will authorize it to intervene.

The views above expressed are supported by numerous au-
149 thorities. The leading case on the subject is that of Darlington *vs.* The Mayor of New York, in 31st N. Y., 164, &c.

The authorities cited on behalf of the plaintiffs in error on the question of the constitutionality of the act concede the general doctrine that the Legislature may alter and even abolish laws incorporating municipal incorporations, but maintain that in so doing property rights cannot be violated. Those authorities, so far as they refer to property rights, do not apply to this cause, because the road board did not have the right of property in the land in reference to which the arbitrators were called to act. They refer to cases where counties, cities, or townships, having by their charters full power to acquire by purchase and to hold property, have exercised such power, usually in furnishing public buildings for governmental use. No case can be found which applies to the facts now before the court where not a dollar has been paid for the land by or for the road board, but where the land in question was assessed for benefits and because of non-payment thereof was transferred nominally to the agent for the use of the Government.

There is no error in the rulings of the supreme court, and the judgment of that court is affirmed.

150 STATE OF NEW JERSEY.

[Coat of arms.]

DEPARTMENT OF STATE.

I, Henry C. Kelsey, secretary of state of the State of New Jersey and *ex officio* clerk of the court of errors and appeals in the last resort in all causes, do hereby certify that the foregoing is a true copy of an opinion read in the above-stated cause, June term, 1887, as the same is taken from and compared with the original (filed July 22nd, 1887) now remaining on file in my office.

Seal of the Secretary of the State of New Jersey.

In testimony whereof I have hereunto set my hand and affixed the official seal of said court this twenty-sixth day of July, A. D. 1887.

HENRY C. KELSEY,
Secretary of State.

[Endorsed:] N. J. court of errors & appeals. June term, 1887. The State, The Essex Public Road Board, pl'ffs in error, *vs.* Jacob Skinkle, def't in error. On error to supreme court. Opinion. Parker, J.

[Stamped:] John W. Taylor, Newark, N. Y., Sep. 6, 1887.

151 New Jersey Court of Errors and Appeals. June Term, 1887.

THE STATE (THE ESSEX PUBLIC ROAD BOARD, Prosecutor) *vs.* JACOB SKINKLE. } In Error to Supreme Court.

The cause having been duly argued at the March term of this court, A. D. 1887, by John W. Taylor, of counsel for the plaintiffs in error, and J. Frank Fort, of counsel for the defendant in error, and the court having considered the same and finding no error in the record or proceedings in the supreme court—

It is thereupon, on this 22d day of July, A. D. 1887, ordered and adjudged that the judgment of the supreme court removed by the writ of error in this cause be affirmed with costs, and that the record be remitted to the supreme court, to be proceeded with in accordance with this judgment and the practice of said court.

On motion of—

J. FRANK FORT,
Att'y of Defendant in Error.

152 [Endorsed:] New Jersey court of errors and appeals. The State, The Essex Public Road Board, prosecutors, *vs.* Jacob Skinkle. In error to supreme court. Remittitur. J. Frank Fort, att'y of def't in error. Filed July 29, 1887. Benj. F. Lee, clerk.

STATE OF NEW JERSEY:

I, Henry C. Kelsey, secretary of state of the State of New
[L. S.] Jersey and *ex officio* clerk of the court of errors and appeals in the last resort in all causes, &c., do hereby certify the foregoing to be a true copy of an order made in the above-stated cause as the same is taken from and compared with the minutes of said court.

In witness whereof I have hereunto set my hand and affixed my official seal this twenty-ninth day of July, A. D. 1887.

HENRY C. KELSEY.

A true copy.

BENJ. F. LEE, *Clk.*

153 Know all men by these presents that we, The Essex Public Road Board, James Peck, and John V. Diefenthaeler, of the county of Essex and State of New Jersey, are held and firmly bound unto Jacob Skinkle, of said county, in the just and full sum of one thousand dollars, to be paid to the said Jacob Skinkle, his certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our successors, heirs, executors, and administrators, respectively, jointly and severally, by these presents.

Sealed with our seals and dated this twenty-eighth day of July, eighteen hundred and eighty-seven.

Whereas the above-bounden The Essex Public Road Board hath prosecuted a writ of error out of the Supreme Court of the United States, directed to the supreme court of the State of New Jersey, to reverse a judgment in a suit between the State of New Jersey (on the prosecution of The Essex Public Road Board) and Jacob Skinkle rendered by the court of errors and appeals of said State, the record whereof has been remitted to and now remains in the said supreme court of said State:

Now, therefore, the condition of this obligation is such that if the above-named The Essex Public Road Board shall prosecute its said writ of error to effect and answer all damages & costs if it shall fail to make its plea good, then this obligation shall be void; otherwise to remain in full force and virtue.

JAMES PECK, [L. S.]
President of Essex Public Road Board.
JAMES PECK. [L. S.]
JOHN V. DIEFENTHAELER. [L. S.]

Sealed and delivered in the presence of—
JOHN W. TAYLOR.

[Endorsed:] Supreme Court of the United States. The Essex Public Road Board *vs.* Jacob Skinkle. Security on error. John W. Taylor, att'y. (Copy.) This bond is approved July 28th, 1887. Joseph P. Bradley, asso. justice Sup. C't U. S. This copy is to be annexed to and returned with the writ of error to U. S. Sup. C't. J. W. T.

154 THE UNITED STATES OF AMERICA, *ss:*

To Jacob Skinkle, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of New Jersey, wherein The Essex Public Road Board is plaintiff in error and you are defendant in error, to show cause, if any there be, why a judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Morrison R. Waite, Chief Justice of the said Supreme Court, the 28th day of July, in the year eighteen hundred and eighty-seven.

JOSEPH P. BRADLEY,
Asso. Justice Sup. C't U. S.

I hereby, as attorney for the above-named Jacob Skinkle, acknowledge service of the foregoing citation by a delivery of a true copy thereof to me July 28, 1887.

J. FRANK FORT,
Att'y of Jacob Skinkle.

[Endorsed:] Supreme Court of the United States. The Essex Public Road Board *vs.* Jacob Skinkle. Citation and acknowledgment of service, &c. Ret'ble Oct. term, 1887. John W. Taylor, att'y. Please file this with writ of error. J. W T.

155 Supreme Court of the United States.

THE ESSEX PUBLIC ROAD BOARD
v.
JACOB SKINKLE.
} On Error. October Term, 1887.

Afterwards, to wit, on the second Monday of October, in the year 1887, before the justices of the Supreme Court of the United States, at the Capitol, in the city of Washington, comes the said The Essex Public Road Board, by John W. Taylor, its attorney, and says that in the record and proceedings aforesaid and also in the giving of judgment aforesaid there is manifest error, in this, to wit, that by the record aforesaid it appears that the judgment, proceedings, and assessments therein mentioned were in all things affirmed with costs, whereas the said judgment, proceedings, and assessments should have been reversed, set aside, and for nothing held.

There is also error in this, to wit, that by the record aforesaid it appears that the judgment aforesaid in form aforesaid was given for the defendant against the said plaintiff whereas by the law of the land judgment ought to have been given for the plaintiff against the defendant.

And the said plaintiff prays that the judgment aforesaid for the errors aforesaid and for other errors in the record and proceedings

aforesaid may be reversed, set aside, and for nothing held, and that the plaintiff may be restored in all things which it has lost by occasion of the judgment aforesaid, &c.

JOHN W. TAYLOR,
Att'y for Pl't'ff in Error.

[Endorsed:] Supreme Court of the United States. The Essex Public Road Board *v.* Jacob Skinkle. On error. Assignment of errors. John W. Taylor, att'y. Filed Jul- 29, 1887. Benj. F. Lee, cl'k. This is to be returned with the writ of error to U. S. Sup. C't. J. W. T.

156 UNITED STATES OF AMERICA:

The President of the United States to the honorable the judges of the supreme court of the State of New Jersey, Greeting:

Because in the record and proceedings and also in the rendition of the judgment of a plea which is in the said court, before you, on remittitur from the court of errors and appeals of said State, between the State of New Jersey (The Essex Public Road Board, prosecutor) and Jacob Skinkle, wherein was drawn in question the validity of a statute of said State on the ground of the same being repugnant to the Constitution of the United States and the decision was in favor of its validity, a manifest error hath happened, to the great damage of the said The Essex Public Road Board, as by its complaint appears, we, being willing that the error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October next, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

The Seal of the U. S. Circuit Court, Dist. of New Jersey.

Witness the Honorable Morrison R. Waite, Chief Justice of the said Supreme Court, the second day of October, in the year of our Lord eighteeen hundred and eighty-six.

S. D. OLIPHANT,
Clerk of the Cir. C't of the U. S. for the Dist. of N. J.

157 [Endorsed:] Supreme Court of the United States. The Essex Public Road Board *vs.* Jacob Skinkle. Writ of error to supreme court of New Jersey. Ret'ble Oct. term, 1887. John W. Taylor, att'y. This writ allowed this 28th July, 1887, by Joseph P. Bradley, asso. justice Sup. C't U. S.

The Answer of the Justices of the Supreme Court of New Jersey Within Named.

The record and proceedings whereof mention is within made, with all things touching and concerning the same, we do certifty to the Supreme Court of the United States in a certain schedule to this writ annexed, as within we are commanded.

M. BEASLEY, *C. J.* [SEAL.]

Endorsed on cover: New Jersey supreme court. No. 262. The Essex Public Road Board, plaintiff in error, *vs.* Jacob Skinkle. Filed October, 19, 1887.

Supreme Court of the United States

OCTOBER TERM, 1890.

No. 262.

THE ESSEX PUBLIC ROAD BOARD,

vs.

JACOB SKINKLE.

On Error to the Supreme Court of New Jersey.

BRIEF FOR PLAINTIFF IN ERROR.

JOSEPH A. BEECHER,
Att'y for and of Counsel with Plaintiff in Error.
JOHN W. TAYLOR,
Of Counsel with Plaintiff in Error.

NEWARK, N. J.:
WARD & TICHENOR, PRINTERS, 832 & 834 BROAD STREET.
1891.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1890.

No. 262.

THE ESSEX PUBLIC ROAD BOARD

vs.

JACOB SKINKLE.

ON ERROR TO THE SUPREME COURT OF NEW JERSEY.

BRIEF FOR PLAINTIFF IN ERROR.

I.

STATEMENT.

The writ of error in this case brings before the Court for review a judgment, pronounced by the New Jersey Court of Errors and Appeals, at the June term, 1887, (R., p. 90, fol. 138,) affirming a judgment of the New Jersey Supreme Court, rendered at the November term, 1886, in favor of the defendant in error, (R., p. 88, fol. 133.) The plaintiff and defendant here were likewise plaintiff and defendant in the said State courts. The plaintiff in error is a body politic and corporate. (Pam. Laws, 1869, p. 957; Road Board Acts, p. 9, Sec. 1.)

The questions involved in the case arise out of proceedings under an act of the legislature of New Jersey, approved March 31st, 1882, entitled, "*An Act to authorize the compromising or settling by arbitration of any taxes or assessments laid by any public road board in this State.*" (Appendix; also Pam. Laws, 1882, p. 256; Road Board Acts, p. 76.) Pursuant to this act, the defendant in error, on September 25th, 1882, made application by a petition to the plaintiff in error, (R. p. 2, fol. 4,) to compromise and settle certain assessments for benefits arising from the opening, grading and paving of Springfield avenue, imposed

by the said plaintiff, under the act incorporating the same, and the supplements thereto, upon premises owned by Caleb B. Headley, at the time the said improvements and assessments were made, and on which the said defendant then held a mortgage, (R., p. 3, fol. 6.) The said plaintiff considered and declined the application, (R., p. 5, fol. 8.) In 1876, while the title of the said lands remained as above stated, they were sold at public sale to the said plaintiff for non-payment of the said assessments, (R., p. 3, fol. 5.) Subsequent to the said sale to, and purchase by the said plaintiff, the said defendant became the owner of the fee thereof, by purchase under his said mortgage, (R., p. 3, fol. 6,) and as such owner applied, by petition, under the act of March 31st, 1882, to the Justice of the Supreme Court holding the Essex Circuit Court, for the appointment of arbitrators to compromise and settle the matters in difference relating to the said assessments, (R., p. 3, fol. 4,) which application was resisted by the plaintiff.

Upon filing the said petition, the said Justice, against the plaintiff's objections, granted a rule to show cause, and testimony for the parties was taken pursuant to the same, (R., p. 6, fol. 10.) Upon this evidence the case was heard at the September term, 1883, of the Essex Circuit Court, by Hon. DAVID A. DEFUE, the Justice who granted the said rule, (R., pp. 6 to 73.) The said Justice, being in doubt as to certain questions of law raised, certified the same for argument before the bar of the State Supreme Court for its advisory opinion thereon, (R., p. 74, fol. 108.) Among other questions certified was the following: "*Whether the legislature can take from a municipal corporation property it is entitled to hold, except as an exercise of the right of eminent domain, and for a public use, and whether the act entitled, 'An Act to authorize the compromising or settling by arbitration of any tax or assessment laid by any public road board in this State,' is in this respect unconstitutional.*" (R., p. 73, fol. 107.)

The Supreme Court decided in favor of the petitioner, on the several questions so certified, (R., pp. 74 to 79,) and held the act constitutional. The Justice holding the said Circuit Court thereupon appointed three arbitrators to fix and adjust the said assessments under the said act of 1882, (R., pp. 80 and 82,) and they reported to the said Circuit Court that the benefits conferred by the said assessments were eight hundred and forty dollars ($840.00,) (R., pp. 83 and 84.) On the third day of January, 1886, an order of the Justice holding the Circuit Court was made

and entered in conformity with this report. The plaintiff in error then obtained a writ of *certiorari* and brought all the proceedings before the Supreme Court for review, (R., p. 86,) and at the September term, 1886, that Court, in all things, affirmed the same, (R., pp. 88 and 89.) The judgment of the Supreme Court was then removed to the New Jersey Court of Errors and Appeals upon a writ of error, and was by that Court in all things affirmed at the June term, 1887, (R., p. 90,) and the record remitted to the Supreme Court to be there proceeded with in accordance with law and the practice of that Court, (R., p. 97.) By this writ the plaintiff in error seeks to obtain a reversal of that judgment, on the ground that it was erroneous in holding that the act of March 31st, 1882, was not a violation of the provisions of the Constitution of the United States, which prohibits the enactment by a State of *any law impairing the obligation of contracts.*

Three different assessments were made by the said Board on the property above referred to, as follows:

1. One for benefits for the opening, &c., of Springfield avenue, ratified April 21, 1873, for..... $940 00
2. One for benefits in the change of grade of said avenue, ratified October 7th, 1878, for..... 104 40
3. One for paving said avenue, made October 13th, 1873, for, (R. p. 3, fol. 6,)..... 890 74

For the non-payment of the first above mentioned assessment the premises were sold December 26th, 1876, to the Road Board, for the term of fifty years, for $1,144.40, the amount due thereon, and a certificate of sale was executed to it, bearing date December 30th, 1876, and recorded January 5th, 1877, (Case, p. 3, fol. 6.)

For the non-payment of the second above mentioned assessment the premises were sold September 5th, 1881, to the Board, for the term of fifty years, for $134.81, the amount due thereon, and a certificate of sale was executed to it, bearing date September 5th, 1881, and recorded January 4th, 1882, (R., p. 3, fol. 6.)

The plaintiff claims the said lands by virtue of the 15th section of the act under which it was incorporated, and a supplement to that act, approved March 31st, 1875, under which the said sales to it were made. The 5th section of this supplement is as follows:

"*That such lands and real estate, (assessed for benefits,) as "are not bid for when offered for sale or for re-sale, pursuant*

"*to the 15th section of the act to which this is a further sup-*
"*plement, shall be struck off to said Board by its corporate*
"*name, for the term of fifty years, and may be held and sold,*
"*assigned and disposed of by said Board for the use of the*
"*county, with all the rights and privileges of a purchaser at*
"*such sale, and subject to the same conditions and limi-*
"*tations.*" (Appendix; Pam. Laws, 1875, p. 420, Sec. 5; Road Board Acts, p. 69, Sec. 95.)

"*The rights and privileges of a purchaser at such sale,*" spoken of in the supplement just quoted, are set forth in the 15th section of the said act of incorporation, which provides that "*such purchaser or purchasers, and his, her, or their legal*
"*representatives shall, by virtue thereof, lawfully hold and*
"*enjoy such lands and real estate, with the rents, issues and*
"*profits thereof, for his, her, or their own proper use against*
"*the owner or owners thereof, and all persons claiming under*
"*him, her, or them, until the term shall be completed and*
"*ended for which the purchaser or purchasers shall have*
"*agreed to take the same as aforesaid and no longer, being*
"*liable for any injury or waste done or committed, in the same*
"*manner as a tenant for a term of years.*" (Appendix; Pam. Laws, 1869, p. 957, Sec. 15; Road Board Acts, pp. 14, 15 and 16, Sec. 15.)

The act of March 31st, 1882, complained of as unconstitutional, provides that it shall be "lawful for any public road board established in the State" to "compound, adjust and compromise" any tax or assessment that have been or may hereafter be laid or imposed by virtue of the powers conferred, with the owner or mortgagee of any lands and real estate assessed for benefits for laying out, opening, widening, or straightening of any public road, street or avenue by any such public road board, and to acquit and discharge the lands and real estate of the owner or mortgagee from such lien upon payment of the sum agreed upon." (Appendix; Pam. Laws, 1882, p. 256, Sec. 1; Road Board Acts, p. 76, Sec. 104.)

This act also provides that in case of the failure of agreement between such board and the applicant, or the neglect or refusal of such board to act upon any such application within a reasonable time, it shall be lawful for such owner or mortgagee to apply by petition to "such justice of the Supreme Court as shall hold the Circuit Court of the county where the land and real estate may lay," for the appointment of three arbitrators to settle and

adjust the matter in difference, and in his discretion the said justice may make such appointment. Their report being filed, and payment or tender of amount found, discharges the land from the lien the same as under the first section. (Appendix; Pam. Laws, 1882, p. 256, Secs. 3 and 4; Road Board Acts, pp. 76 and 77, Secs. 105 and 106.)

II.

Specifications of Error.

1. The act of the New Jersey Legislature, approved March 31, 1882, and drawn in question in said proceedings, was an act impairing the obligation of contracts and therefore void, and judgment in the cause should have been given for the plaintiff against the defendant.

2. The said act of the legislature was in violation of the fourteenth amendment of the constitution of the United States, in that it deprived the plaintiff of property without due process of law.

III.

BRIEF OF ARGUMENT.

First Point.

The act of March 31, 1882, under which the proceedings in this cause were taken, and upon which the judgment of the State Court was rendered, is a "law impairing the obligation of contracts," and "deprived the plaintiff of property without due process of law," and is repugnant to the constitution of the United States.

1. *The plaintiff corporation had full power and authority to purchase the land in question, for the term of fifty years, under Section 5 of the Supplement of 1875, and did so, as above set forth.*

This is not questioned or denied, and the proceedings taken by defendant under the act of March 31st, 1882, recognize and es-

tablish the validity of the plaintiff's title to the same at that time, which the defendant thereby sought to transfer to himself, (R., p. 2, fol. 3.)

Appendix, p. 18; Pam. Laws, 1875, p. 420, Sec. 5. Road Board Acts, p. 69, Sec. 95.

2. *The important question here is whether the plaintiff had a contract, by reason of its purchase as aforesaid, the obligation of which was impaired by the subsequent legislation found in the act of March 31st, 1882.* (*Appendix, p. 18; Pam. Laws, 1882, p. 256; Road Board Acts, p. 76.*)

By the supplementary act quoted in the former part of this brief, it is enacted that "lands and real estate" *struck off to the Board* "*may be held and sold, assigned and disposed of by said Board for the use of the County,* WITH ALL THE RIGHTS AND PRIVILEGES OF A PURCHASER AT SUCH SALE."

Under this enactment the Board became vested "with ALL THE RIGHTS AND PRIVILEGES OF A PURCHASER," for fifty years, of the land in question, by virtue of a *contract executed.* The plaintiff therefore insists that it has a valid contract within the terms of the constitution of the United States.

Appendix, p. 18; Pam. Laws, 1882, p. 256.
Id. 1875, p. 420, Sec. 5.

.3 *The real object of this proceeding under the act of March 31st, 1882, in question, is to impair and annul the obligation of that contract, and take for the private use of the defendant, the property so vested in the Board.*

The object is expressed, in language used by the Justice who delivered the opinion of the Court, in these words: (R., pp. 94, 95, fol. 146.)

"It is further urged that the act is *unconstitutional, because it assumes to provide a mode whereby land of the Road Board may be taken from it without its consent, and by compulsion and coercion transferred to another,* upon payment of a sum fixed by arbitrators in the selection of whom the Board does not participate. *It is argued that such legislation* IMPAIRS THE OBLIGATION OF CONTRACTS."

Mr. Justice STORY, speaking for the Court in the case of *Wilkinson* v. *Leland,* 2 Peters, 653, *at* 657, says: "*We know of no case where a legislative act to transfer the property of A to B, without his consent, has ever been held a constitutional exercise of legislative power in any State in the*

Union;" and BRONSON, *J.*, in *Taylor* v. *Porter*, 4 Hill. (N. Y.) 143, tersely says: "*The power of making bargains for individuals has not been delegated to any branch of the government.*"

It is not perceived how the legislature could have given to any person natural or artificial, public or private, the right to hold a term of fifty years in lands and real estate, by language more direct, clear or conclusive, than that which was used by the law makers in conferring that right upon the Essex Public Road Board.

4. *The proceedings taken by the defendant under the act of March 31st, 1882, which resulted in a judgment affirming the report of the arbitrators, impaired the obligation of a contract with the plaintiff, protected by the constitution of the United States.* (R., p. 96, fol. 149.)

Appendix, p. 18; Pam. Laws, 1882, p. 256.
Road Board Acts, p. 76.

Section 15 of the act of incorporation should be read in connection with Section 5 of the Supplement thereto of 1875, by which the plaintiff was authorized and *empowered to do that which before it had no legislative authority for doing.*

It is respectfully insisted that the learned Justice of the State Court failed to give proper force and effect to the fifth section of the supplement of 1875, in connection with the fifteenth section of the act incorporating the said plaintiff, for he says in his opinion that, "The legislature may even annul all the powers of "the road board by repealing the law creating it, *so long as it* "*does not interfere with individuals who purchase bona fide* "*under its provisions.*" (R. p. 96, fol. 148.) Here is an implied declaration by the Court that the law could not interfere with the right of any individual who should purchase such lands *bona fide* under the provisions of the act of 1882.

When the legislature enacted, "*That such lands and real* "*estate shall be struck off to said board, by its corporate name,* "*for the term of fifty years, and may be held and sold, as-* "*signed and disposed of, by said board for the use of the* "*county, with all the rights and privileges of a purchaser* "*at such sale, and subject to the same conditions and limita-* "*tions,*" we naturally look further to ascertain what are "*The* "*rights and privileges of a purchaser at such sale.*" This question is conclusively answered in the fifteenth section above referred to, (Appendix, p.17,) the language of which is as follows:

"*And such purchaser or purchasers, and his, her, or their* "*legal representative shall, by virtue thereof, lawfully hold* "*and enjoy such lands and real estate, with the rents, issues* "*and profits thereof, for his, her, or their own proper use* "*against the owner or owners thereof, and all persons claiming* "*under him, her or them, until the term shall be completed* "*and ended for which the purchaser or purchasers shall have* "*agreed to take the same as aforesaid, and no longer, being* "*liable for any injury or waste done or committed in the same* "*manner as a tenement for a term of years.*" This language is clear and explicit and gives to the Road Board a term of fifty years in the lands purchased by the same title and subject to the same protection that any other *bona fide* purchaser at such sale would have acquired. We think that the Court failed to distinguish between the powers of the legislature to *control* the plaintiff corporation, and even to repeal the law creating it, and the right of *property* in the said lands, the title to which it held for the use of the inhabitants of the County of Essex.

Mr. Justice COOLEY, in the case of the *Board of Park Commissioners* v. *Common Council*, 28 Mich. 238, uses this language: "But it cannot be contended that authority in the leg- "islature to determine what shall be the extent of capacity in a "city to acquire and hold property, is equivalent to, or contains "within itself the authority to deprive the city of property "actually acquired by legislative permission. As to the prop- "erty it thus holds for its own private purposes, a city is to be "regarded as a constituent in State government and is entitled "to the like protection in its property rights, as any natural "person who is also a constituent. The right of the State as re- "gards such property, is a right of *regulation*, and though "broader than exists in the case of individuals, is not a right of "*appropriation.* The constitutional principle that no person "shall be deprived of property, without due process of law, ap- "plies to artificial persons as well as natural, and to municipal "corporations, in their private capacity, as well as to cor- "porations for manufacturing and commercial purposes."

Park Comrs. v. *Com. Council*, 28 Mich. 238.

It is admitted that a municipal or public corporation may be abolished or modified at any time, but so may private corporations of recent creation. It is admitted, moreover, that in the line of *political* legislation, the power of the legislature is almost

unlimited in respect to municipal or public corporations; but it is insisted, nevertheless, that such corporations, *so long as they are permitted to exist, are under the protection of the constitutional provision against enactments "impairing the obligation of contracts,"* so far, at least, as regards what may be termed their private property.

The discussion of this subject by the learned author of *Dillon on Municipal Corporations*, (4th Ed. Vol. 1, Secs. 66 to 69, and his citations and notes of cases,) gives a clear and concise view of the question involved in this case, and the author reaches this conclusion, (Sec. 68, p. 116): "It is agreed by all the authorities that "under the power to repeal the charters of private corporations, "the legislature cannot take away property acquired under the "operation of the charter; and as to municipal corporations, "the only question is whether the legislature can deprive *them*, "or rather perhaps their inhabitants of their property. It is be-"lieved by the author, that while the legislature has full power "of legitimate regulation and control, it cannot deprive them, "(that is, in essence, the *people* of the locality at whose expense "it has been acquired or for whose benefit it was granted,) of "such property. It is in effect fastened with a trust for the in-"corporated municipality as long as the legislature suffers it to "live, and for the benefit of the people of the locality if the cor-"porate entity which represents their rights shall be dissolved. "(Sec. 68, p. 116.)"

In Section 66 the author distinguishes between the public and private functions of municipal corporations as follows: "It "assists to an understanding of the extent of legislative power "over municipal corporations proper (incorporated towns and "cities) to observe that these, as ordinarily constituted, possess a "double character; the one *governmental, legislative* or *public;* "the other in a sense *proprietary* or *private.* * * * In its "*governmental or public* character, the corporation is made by "the State one of its instruments, or the local depository of "certain limited and prescribed political powers, to be exercised "for the public good on behalf of the State, rather than for "itself. In this respect it is assimilated in its nature and func-"tions, to a county corporation, which as we have seen, is purely "part of the governmental machinery of the sovereignty which "creates it. Over all its civil, political or governmental powers, "the authority of the legislature is, in the nature of things, "supreme and without limitation, unless the limitation is found

"in the constitution of the particular State. But in its *proprie-*
"*tary or private character* the theory is, that the powers are
"supposed not to be conferred, primarily or chiefly from con-
"siderations connected with the government of the State at
"large, but for the private advantage of the compact community
"which is incorporated as a distinct *legal personalty* or *corpor-*
"*ate individual;* and as to such powers and to property acquired
"thereunder, and contracts made with reference thereto, the
"corporation is to be regarded *quo ad hoc* as a private corpora-
"tion, or at least not public in the sense that the power of the
"legislature over it or the rights represented by it, is omnipotent."

And in Section 68, p. 111, he says: "That property acquired and
"owned by a municipal corporation by legislative consent, is not
"subject to an unlimited power of the legislature over it, is con-
"sonant with natural justice. The need of having property,
"and of property rights, is one of the main reasons why munici-
"pal corporations are created. This is strongly expressed by
"Savigny in respect of municipal corporations in ancient Rome.
"If a municipal corporation as representing a distinct community,
"be regarded as a *legal person*, the legislature in effect says to
"it, 'you may at your own expense acquire property,' and *if it*
"*acts* on such permission, the courts may, perhaps, fairly de-
"duce a contract that the legislature, while it may regulate or
"change the uses of such property, will not deprive the corpora-
"tion of it. Accordingly *the weight of opinion seems to be in*
"*favor of the doctrine* that there may be in such corporations
"*rights*, under contracts and grants, *which are beyond destruc-*
"*tion by the legislature*, though not beyond legitimate legislative
"authority and control."

Dillon on Mun. Corp. 4th Ed. (1890), Sec. 66,
p. 107, Sec. 68, pp. 111 and 116, and *Ib.* Sec. 73.

The result of the decisions as above stated by Dillon, is also given by Cooley in his work on *Constitutional Limitations*, (6th Ed. pp. 289 and 290,) in this language: "It (the municipal corporation,) can hold and own property only for corporate purposes, and its powers are liable at any time to be so *modified by legislation* as to render the property no longer available. Moreover, the charter rights may be altogether taken away; and in that case the legislature has deprived the corporation of its property by depriving it of corporate capacity to hold it." * * "But whether the State can directly interfere and *take away the corporate property, or whether on repealing a charter of incor-*

poration it can take to itself the corporate property and dispose of it at its discretion, are different questions from any raised by the indirect and incidental interference referred to."

Referring to cases in the Supreme Court of the United States, the same author says: "*They draw a distinction between the political rights and privileges conferred upon corporations, and which are not vested rights in any sense implying constitutional permanence, and such rights in property as the corporation acquires, and which, in view of these decisions, are protected by the same reasons which shield similar rights in individuals.*"

WE TAKE THE RULE OF LAW UPON THE SUBJECT TO BE THAT: "When corporate powers are conferred, there is an *implied contract* between the *State and the corporators*, that the property which they are given the capacity to acquire for corporate purposes under their charter, *shall not be taken from them and appropriated to other uses. If the State grants property to the corporation, the grant is an executed contract which cannot be revoked. The rights acquired either by such grants or by any other legitimate mode in which such a corporation can acquire property, are vested rights and cannot be taken away.*"

Dillon Mun. Corps., 4th Ed. 1890, Vol. I. Secs. 66 to 69; and Secs. 72 and 73.
Cooley's Const. Lim., 6th Ed. pp. 289, 290, and p. 29.
Kent's Com., Vol. II. 275.
Wade's Retroactive Laws, Sec. 56.
People v. *Morris*, 13 Wend. (N. Y.) 324, at 329, (1835.)
Detroit v. *Detroit, et al.*, 43 Mich. 140, at 148, (1880.)
People v. *Hurlbut*, 24 Mich. 44, at 95, (1872.)
Taylor v. *Porter*, 4 Hill. 140, at 143, (1843.)
State v. *Tappan*, 29 Wis. 664, at 682, (1872.)
Windham v. *Portland*, 4 Mass. 384, at 388, *389, (1808.)
Hampshire v. *Franklin*, 16 Mass. 75, at *84, (1819.)
People v. *Porter*, 26 Hun. (N. Y.) 622, (1882.)
People v. *Albertson*, 55 N. Y. 50, at 55, (1873.)
People v. *Shepherd*, 36 N. Y. 285, (1867.)

Fletcher v. *Peck*, 6 Cranch. 328, at 336, *136, (1810.)

People v. *Batchellor*, 53 N. Y. 128, at 140, 141, (1873.)

Bailey v. *Mayor of New York*, 3 Hill. 531, at 539, (1842.)

Grogan v. *San Francisco*, 18 Cal. 590, at 612, (1861.)

Milwaukee v. *Milwaukee*, 12 Wis. 103, at 109, *99, (1860.)

Terrett v. *Taylor*, 9 Cranch. *43, at *50, (1815.)

Paulet v. *Clark*, 9 Cranch. *292, at *336, (1815.)

St. Louis v. *Russell*, 9 Mo. 503.

State v. *Haben*, 22 Wis. *661, at *666, (1868.)

People v. *Common Council*, 28 Mich. 228, 237, (1873.)

Wilkinson v. *Leland*, 2 Peters, *653, at 657, (1829.)

Dartmouth College v. *Woodward*, 4 Wheat. *518, at *718, (1819.)

Small v. *Danville*, 51 Me. 359, at 362, (1864.)

Western College v. *Cleveland*, 12 Ohio St. 375, at 377, (1861.)

Saving Fund Society v. *Philadelphia*, 31 Penn. St. 175, at 183, (1858.)

Benson v. *Mayor of New York*, 10 Barb. 223, at 234 and 245, (1850.)

People v. *Supervisors*, 4 Barb. 64, at 70, (1848.)

People v. *Mayor, &c. of Chicago*, 51 Ill. 17, (1869.) S. C. Am. Rep. 278, (1869.)

Milan County v. *Bateman*, 54 Texas, 153, (1880.)

Montpelier v. *East Montpelier*, 29 Vt. 12, (1856.)

Atkyns v. *Randolph*, 31 Vt. 226, (1858.)

Bodoinham v. *Richmond*, 6 Me. 112.

Union Pacific R. R. Co. v. *United States*, 99 U. S. 700, at 731, 732, 739, 742 and 743, (1878.)

Pimental v. *San Francisco*, 21 Cal 352, at 366, (1863.)

People v. *O'Brien*, 111 N. Y. 1, at 42, 49, (1888.)

Bridge Proprietors v. *Hoboken Co.* 1 Wall. 116, at 142, (1863.)

Essex Public Road Board v. *Skinkle*, 20 Vr. 641, (1887.) (Report of this case below.)

5. *The judgment of the Court, affirming the said report of the arbitrators, deprived the plaintiff of property without due process of law, and is repugnant to the XIV. Amendment of the Constitution of the United States.*

DILLON, in a *note to Section 68*, p. 113, (Mun. Corps.,) refers to the cases of *Grogan* v. *San Francisco*, 18 Cal. 590, and *People* v. *O'Brien*, 111 N. Y. 1, and says: "Mr. Justice FIELD and "RUGER express the opinion that the private property of municipal corporations is protected by the contract clause of the "Federal Constitution. Since the opinion of Mr. Justice FIELD "was given the XIV. Amendment has been adopted. It provides that no person shall be deprived of property without due "process of law, and the property rights of private corporations are held by the Supreme Court of the United States to "be within the amendment. A compact body of people, such, "for example, as the city of New York, have needs not common to the State at large; hence their incorporation with a "distinct capacity to acquire and hold property for the use and "benefit of this distinct body of people. It is their property. "No reason suggests itself to us why their ownership, as against "a total diversion of use, is not protected by the XIV. Amendment. (Also *ib.* Sections 68*a*, 72, 73.")

Dillon on Mun. Corps., 4th Ed. Vol. I. Sects. 66 to 69; also Sects. 72 and 73.

Mr. Justice BRADLEY, in his opinion in the Sinking Fund case, says: "It will not do to say that the violation of the contract by the law in question is not a taking of property. In the first place, it is literally a taking of property. It compels the companies to pay over to the government, or its agents, money to which the government is not entitled. That it will be entitled, by the contract, to a like amount at some future time, does not matter. Time is a part of the contract. To coerce a delivery of the money is to coerce without right a delivery of that which is not the property of the government, but the property of the companies. *But if it were not, as it is, an actual or physical taking of property, if it were merely the subversion of the contract and the substitution of another contract, in its place, it would be a taking of property within the spirit of the constitutional provisions. A contract is property. To destroy it wholly, or to destroy it partially, is to take it; and to do this, by arbitrary legislative action, is to do it without due process of law.*"

Union P. R. R. Co. v. *United States*, 99 U. S. 700, at 746 and 747, (1878.)

Mr. Justice FIELD also spoke clearly and forcibly in those cases. He said: "Contracts are property, and a large portion of "the wealth of the country exists under that form. Whatever "impairs their value diminishes, therefore, the property of the "owner, and if that be effected by direct legislative action oper- "ating upon the contract, forbidding its enforcement or trans- "fer, or otherwise restricting its use, *the owner is as much "deprived of his property without due process of law as if the "contract were impounded, or the value it represents were in "terms wholly or partially confiscated.* The law that protects "the wealth of the most powerful protects, also, the earnings of "the most humble; and the law which would confiscate the "property of the one, would, in the end, take the earnings of "the other."

Union Pacific Railroad Company v. *United States*, 99 U. S. 700, at 766 and 777, (1878.)

The mistake of the Court below seems to arise from inferring the right of the legislature to impair the obligation of contracts of a public or municipal corporation, *from* its possession of the *power to create and destroy such a corporation*, (R., p. 96, fol. 148.)

The fallacy of this argument will appear by applying it to the contracts of *private* corporations which are equally subjects of legislative creation and abolition.

The learned Justice, who spoke for the Court below, further says: "*The land did not become the property of the Board.* * * * The land was held in the corporate name of the Board *as the property of the public*, subject to the right of redemption during fifty years, and subject also to the control of the legislature." (R., p. 95, fol. 147.)

This begs the whole question and shows an oversight of what the legislature really enacted on the subject. The lawmakers declared:

"That such lands and real estate [assessed for benefits] as are not bid for when offered for sale or for re-sale, pursuant to the fifteenth section of the act to which this is a further supplement, *shall be struck off to said Board*, by its corporate name, *for the term of fifty years, and may be held and sold, assigned and disposed of* BY SAID BOARD *for the use of the county*, WITH ALL THE RIGHTS AND PRIVILEGES OF A PURCHASER AT SUCH SALE, *and subject to the same conditions and limitations.*"

The land *did* become "*the property of the Board*," though as trustee for the county.

The Board had both the *jus tenendi* and *jus disponendi*, "WITH ALL *the rights and privileges of a purchaser;*" that is, of *any individual* purchaser.

It thus appears that the *rights* of the Board are as *fully vested, as complete and as* SACRED as those of an individual purchaser; and it is submitted that the act in question is void for the reasons stated, and that the judgment should be reversed.

JOSEPH A. BEECHER,
Att'y for and of Counsel with the Pl'ff in Error.

JOHN W. TAYLOR,
Of Counsel for the Pl'ff in Error.

APPENDIX.

AN ACT CONSTITUTING A PUBLIC ROAD BOARD FOR THE LAYING OUT, CONSTRUCTING, APPROPRIATING, IMPROVING AND MAINTAINING PUBLIC CARRIAGE ROADS IN THE COUNTY OF ESSEX.

SEC. 1. Be it enacted by the Senate and General Assembly of the State of New Jersey, That Aaron B. Baldwin, George Peters, William H. Murphy, Jesse Williams and Robert M. Hening, and their successors to be appointed and elected as hereinafter provided, be and they are constituted a Board of Commissioners to be known and designated as "The Essex Public Road Board," for the purpose of laying out, constructing, appropriating, improving and maintaining free carriage roads in the County of Essex.

Pam. Laws, 1869, p. 957. Road Board Acts, Sec. 1, p. 9.

SEC. 15. Any and all assessments which may be made under and by virtue of this act (except only assessments of damages for lands and real estate taken, and for the alteration of the grade of any road,) shall be and remain liens upon the lands and real estate benefited as aforesaid, from and after the time or times, when the said assessments were so adopted, ratified and confirmed by the said Board, until the same shall be fully paid or collected; and that every assessment made as aforesaid shall be payable and collectible in four equal annual installments in two, three and four years, respectively, from the date of such assessment, unless the person or persons assessed shall elect to pay the same sooner and in one payment, in which case he or they shall be at liberty so to do, and shall be allowed a proper rebate of interest thereon (see 42); that if any installment of such assessment shall remain unpaid in whole or in part for six months after the same shall become due and payable, the whole or any balance of such assessment, notwithstanding anything hereinbefore contained, shall thereupon become due and collectible, and may be sued for and collected by said Board in their corporate name, in an action on the case, against the owner or owners of such lands and real estate respectively, in any court having cognizance of the amount sued for, or the said Board may proceed to advertise said land and real estate upon which said assessment may be a lien, to be sold at public auction, at the Court House of said county on some day not less than two months distant, between two and five o'clock in the afternoon; that such advertisement shall be published for the space of time aforesaid next preceding the sale, in at least three newspapers of said county, at least once in each week; that said advertisement shall be the only notice required, and shall contain the names of the land owners in default, if the same be known, together with the amounts due by them respectively, and a short description of their said land and real estate, so assessed as aforesaid; that at the time of said sale the several parcels of said land and real estate shall be openly sold to the person or persons who will take the same for the shortest period of time, not exceeding fifty years from the day of sale, and shall pay to the Board before the close of the sale, the full amount due upon said unpaid assessment,

with interest thereon from the time of the same being made, at the rate of seven per centum per annum, and also such sum as the Board shall determine to be a fair proportion of the expenses of advertising and conducting the sale; that in the event of any purchaser neglecting to make such payment as aforesaid, he shall forfeit all claim to said land and real estate, and the same shall be re-sold by the Board at their convenience upon such advertisement as aforesaid; that the Board may adjourn the sale from time to time by making public proclamation thereof at the time of such adjournment; that as soon as practicable after the close of the sale, the Board shall make and deliver to any purchaser thereat who shall have made such payment as aforesaid, a certificate of sale under their hands and seals, and duly acknowledged according to law, setting forth, as concisely as may be, the facts of said assessment, advertisement and sale, together with a description of the lands and real estate so sold, the amount actually paid therefor by said purchaser, and the length of time for which he shall have so purchased the same: that said certificate shall, before its delivery, be recorded in one of the books to be kept by the Board for such purpose; that said certificate may be assigned, by deed of assignment under seal duly acknowledged as aforesaid, and that such assignment may be recorded in the books of said Board, upon the payment of a fee of one dollar therefor, that if at the end of three years from the day of sale, said land and real estate shall not have been redeemed by said owner or owners, his, her, or their legal representatives, or any mortgagee, or mortgagees thereof, or any judgment creditor or creditors, or any other person or persons, having a legal or equitable interest therein, by the payment to the said Board for the benefit of said purchaser, his heirs or assigns, of the amount originally paid by said purchaser, and any other tax or assessment which he may have paid and of which he may have given written notice to said Board, together with interest on such payments, at the rate of fifteen per centum per annum, the Board shall upon the surrender of said certificate execute and deliver to said purchaser, his legal representatives or assigns, a declaration of sale, under their hands and seals, and duly acknowledged as aforesaid, briefly stating the facts of said assessment, advertisement and sale, together with a description of said land and real estate, and a statement of the time for which the same has been so sold; that said declaration of sale shall be recorded in the books of said Board, and also in the records of deeds in the office of the Register of said county, upon the payment of a fee of one dollar in each case; that until the recording of such declaration, the time for redeeming said land and real estate as aforesaid shall remain open, notwithstanding the said term of three years may have expired; that such declaration shall be presumptive evidence in all courts and elsewhere that such sale and proceedings were regularly made and had, according to the provisions of this act; and such purchaser or purchasers, and his, her, or their legal representatives shall, by virtue thereof, lawfully hold or enjoy such lands and real estate, with the rents, issues and profits thereof, for his, her, or their own proper use against the owner or owners thereof, and all persons claiming under him, her or them, until the term shall be completed and ended for which the purchaser or purchasers shall have agreed to take the same as aforesaid, and no longer; being liable for any injury or waste done or committed in the same manner as a tenant for a term of years; but no mortgagee whose mortgage shall have been recorded or registered before any such sale, shall be divested of his rights in and to said lands and real estate, unless six months

notice of such sale shall be given to him, in writing, by such purchaser or any person or persons claiming under him, which notice shall be served personally, if said mortgagee be a resident of the said county, and if not, shall be addressed to his place of residence as stated in said mortgage or assignment thereof; that if any such land and real estate shall be so redeemed by any judgment creditor or mortgagee, he shall have a lien on said land and real estate for the amount actually paid by him as aforesaid, with legal interest thereon, to be collected and recovered in the same manner and at the same time as if included in the mortgage or judgment; and that no assessment or sale shall be set aside or declared invalid, because of any error in the name of any land owner or because of the omission to name him or her when unknown to the Board, or because of any slight error or inaccuracy in the description of said land and real estate in any of the proceedings, provided the same be so described as to be easily identified.

Pam. Laws, 1869, p. 957. Road Board Acts, Sec. 15, p. 14.

SUPPLEMENT APPROVED MARCH 31, 1875.

SEC. 5. And be it enacted, That such lands and real estate as are not bid for when offered for sale or for re-sale, pursuant to the fifteenth section of the act to which this is a further supplement, shall be struck off to said Board by its corporate name, for the term of fifty years, and may be held and sold, assigned and disposed of by said Board for the use of the county, with all the rights and privileges of a purchaser at such sale, and subject to the same conditions and limitations.

Pam. Laws, 1875, Sec. 5, p. 420. Road Board Acts, Sec. 95, p. 69.

AN ACT TO AUTHORIZE THE COMPROMISING OR SETTLING BY ARBITRATION OF ANY TAX OR ASSESSMENT LAID BY ANY PUBLIC ROAD BOARD IN THIS STATE.

SEC. 1. Be it enacted by the Senate and General Assembly of the State of New Jersey, That it shall and may be lawful for any public road board established in this state, by majority vote of the members thereof, to compound, adjust and compromise any tax or taxes, assessment or assessments that may have been or may hereafter be laid or imposed by virtue of the powers conferred by any act or acts, under which such public road board may have been organized or created or is now acting, or which may authorize the laying out, opening, widening or straightening of any public road, street or avenue, by any public road board in this state, with the owner or owners, mortgagee or mortgagees of any lands and real estate which may have been or may hereafter be taxed or assessed for benefits for any such improvements, openings, widenings or straightenings, and to acquit and discharge the lands and real estate of any such owner or owners, mortgagee or mortgagees, from the lien of any such tax or assessment upon the payment of the sum or sums agreed upon, in such manner and at such time as may be mutually arranged and signified by writing.

SEC. 2. And be it enacted, That in case of an application by any owner

or owners, mortgagee or mortgagees, for a compromise and adjustment with any public road board in this state under the provisions of the first section of this act of any tax or taxes, assessment or assessments, laid or imposed as in said section stated or, for the cause therein stated, and of the failure of agreement between such board and the applicant or applicants, or the neglect or refusal of such board to act upon any such application within a reasonable time after the reception thereof, then, and in that case, it shall and may be lawful, upon ten days' notice to such board, left with the president thereof, for such owner or owners, mortgagee or mortgagees so applying, to apply by petition, duly verified, to such justice of the Supreme Court of this state as shall hold the Circuit Court of the county in which the land and real estate, or any part of it, may lay, reciting in such petition the fact of application to such board and their failure to agree with the petitioner, or their neglect or refusal to act within a reasonable time, for the appointment of three disinterested freeholders as arbitrators, to settle and adjust the matter in difference between the petitioner or petitioners and such board, relative to such tax or taxes, assessment or assessments.

SEC. 3. And be it enacted, That in case it shall appear to such Supreme Court Justice that the facts recited in the petition are true, then, and in that case, he may, in his discretion, if he shall deem it a proper case for arbitration, appoint such arbitrators as aforesaid, who, when appointed, shall, before entering upon their duties, subscribe before the clerk of the county, or a Judge of the Court of Common Pleas, an oath for the faithful performance of their duties and the trust reposed in them as arbitrators in the matter in difference between the petitioner and such Board, as is recited in the petitioner's petition, and shall within ten days after their appointment and subscribing of the oath, view the land and real estate upon which the tax or taxes, assessment or assessments is laid or imposed, and after such view, shall notify all parties in interest, of the time and place when they will sit and hear all parties or their witnesses in relation to the matters referred to them; and shall, after hearing all parties and witnesses, and taking into consideration all taxes, assessments and impositions of every nature whatsoever, and of the value of the land and real estate in proportion to the taxes and assessments against the same, proceed to fix and adjust a specific sum or amount to be paid by the owner or owners, mortgagee or mortgagees, so petitioning, in full settlement and discharge of the tax or taxes, assessment or assessments, levied or imposed by any such public road board, under any laws of the nature, or for the purpose in the first section hereof referred to, against or upon the land and real estate particularly mentioned and described in the petition under which said arbitrators were appointed; *provided*, however, that the provisions of this act shall not apply to cases where land and real estate has been sold for taxes or assessments, and bought therefor by a bona fide purchaser, other than such public road board or its representative.

SEC. 4. And be it enacted, That said arbitrators shall proceed to the performance of their duties with all reasonable dispatch, and shall make up and present their final report in writing to the justice of the Supreme Court appointing them, within sixty days after the date of their appointment, which shall be signed by at least a majority of them, and which, when presented, shall be ordered filed with the clerk of the county, there to remain of record; and upon the service of a certified copy of such finding and report of the arbitrators upon

and tender of the amount named therein to such public road board, together with interest at legal rate from the date of filing the arbitrators' report, the president, treasurer or collector thereof shall receipt said tax or taxes, assessment or assessments, against such land or real estate in full, and give a release and acquittance of the same from the lien of any such tax or taxes, assessment or assessments, and all past due interest, cost or penalties thereon, and said land and real estate shall by operation thereof, be freed, released and discharged from the lien and encumbrance thereof; the arbitrators shall be paid by either or both parties as the Court directs, but not to exceed five dollars each for each sitting, beside the view, and for not more than five sittings in all.

SEC. 5. And be it enacted, That all acts inconsistent with this act shall be and the same are hereby repealed, and that this act shall take effect immediately.

Pam. Laws, 1882, p. 256. Road Board Acts, Secs. 104 to 108, p. 76.

Supreme Court of the United States

OCTOBER TERM, 1890.

No. 252.

THE ESSEX PUBLIC ROAD BOARD,

vs.

JACOB SKINKLE.

On Error to the Supreme Court of New Jersey.

BRIEF OF JOHN W. TAYLOR,

For Plaintiff in Error.

NEWARK, N. J.:
WARD & TICHENOR, PRINTERS, 832 & 834 BROAD STREET.
1891.

and tender of the amount named therein to such public road board, together with interest at legal rate from the date of filing the arbitrators' report, the president, treasurer or collector thereof shall receipt said tax or taxes, assessment or assessments, against such land or real estate in full, and give a release and acquittance of the same from the lien of any such tax or taxes, assessment or assessments, and all past due interest, cost or penalties thereon, and said land and real estate shall by operation thereof, be freed, released and discharged from the lien and encumbrance thereof; the arbitrators shall be paid by either or both parties as the Court directs, but not to exceed five dollars each for each sitting, beside the view, and for not more than five sittings in all.

SEC. 5. And be it enacted, That all acts inconsistent with this act shall be and the same are hereby repealed, and that this act shall take effect immediately.

Pam. Laws, 1882, p. 256. Road Board Acts. Secs. 104 to 108, p. 76.

Supreme Court of the United States

OCTOBER TERM, 1890.

No. 262.

THE ESSEX PUBLIC ROAD BOARD,

vs.

JACOB SKINKLE.

On Error to the Supreme Court of New Jersey.

BRIEF OF JOHN W. TAYLOR,

For Plaintiff in Error.

NEWARK, N. J.:
WARD & TICHENOR, PRINTERS, 832 & 834 BROAD STREET.
1891.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1890.

No. 262.

THE ESSEX PUBLIC ROAD BOARD

vs.

JACOB SKINKLE.

ON ERROR TO THE SUPREME COURT OF NEW JERSEY.

BRIEF OF JOHN W. TAYLOR,

For Plaintiff Error.

PRELIMINARY STATEMENT.

This case arose out of an application by petition on behalf of the defendant in error, (under the act entitled "*An act to authorize the compromising or settling by arbitration of any tax or assessment laid by any Public Road Board in this State,*") approved March 31st, 1882, (P. L. p. 256,) for the appointment by a Justice of the Supreme Court of three arbitrators to settle and adjust the matter in difference between the defendant in error and the prosecutor, relative to certain assessments for benefits imposed under the act incorporating the prosecutor, and the supplements thereto, upon premises at the time owned by Caleb B. Headley, and since conveyed to the defendant in error.

There were three different assessments, as follows:

1. One ratified April 21, 1873, for the benefits of laying out and widening Springfield avenue, for..... $940 00
2. One on account of benefits of the change of grade of said avenue, ratified October 7, 1878, for... 104 40
3. The other for paving said avenue, made October 13, 1873, for..... 890 74

For the non-payment of the first above mentioned assessment, the premises were sold December 26th, 1876, for the term of fifty years, to the prosecutor, for $1,144.40, the amount due thereon,

and a certificate of sale executed to it bearing date December 30th, 1876, and recorded January 5th, 1877.

For the non-payment of the secondly above mentioned assessment, the premises were sold September 5th, 1881, for the term of fifty years, to the prosecutor, for $184.81, the amount due thereon, and a certificate of sale executed to it bearing date September 5th, 1881, and recorded January 4th, 1882.

See *Record*, p. 74.

The sales to the prosecutor were made by virtue of a supplement to the act incorporating it, approved March 31st, 1875, (P. L. p. 420,) the fifth section of which enacts:

"That such lands and real estate [assessed for benefits] as are not bid for when offered for sale or for re-sale, pursuant to the fifteenth section of the act to which this is a further supplement, shall be struck off to said Board, by its corporate name, for the term of fifty years, *and may be held and sold, assigned and disposed of by said Board for the use of the county, with all the rights and privileges of a purchaser at such sale, and subject to the same conditions and limitations.*"

The Rights of a Purchaser.

"*Such purchaser or purchasers*, and his, her, or their legal representatives shall, by virtue thereof, *lawfully hold or enjoy such lands and real estate, with the rents, issues and profits thereof, for his, her, or their own proper use against the owner or owners thereof, and all persons claiming under him, her, or them until the term shall be completed and ended for which the purchaser or purchasers shall have agreed to take the same as aforesaid.*"

See *Road Board Acts*, § 15.
N. J. Session Laws of 1869, p. 957, (§ 15.)

The Questions Involved.

There were five questions of law involved in the case, which were certified to be argued before the State Supreme Court for its advisory opinion, viz:

First. Whether the act is unconstitutional.

Second. Whether a mortgagee, who has bought the property covered by his mortgage, can apply under the act.

Third. Whether the act is so imperfect as to be unenforceable.

Fourth. Whether the act is retrospective as regards property sold before its passage.

Fifth. What considerations are to guide the Judge in deciding whether it is a proper case for arbitration.

See *Record*, p. 73.

These questions, having been argued before the State Supreme Court, and its advisory opinion certified to the Justice to whom the petition had been presented, judgment was rendered in conformity thereto, and arbitrators having been appointed, in pursuance of said petition, and having made their report, the same was thereupon ordered to be filed, and the costs of the petitioner ordered to be paid by the respondent, (the plaintiff in error.)

The petition, report, orders and all the proceedings were brought before the State Supreme Court for review, and were affirmed by its judgment, and that judgment having been removed to the Court of Errors and Appeals of that State, was affirmed by that Court, and the record remitted to the State Supreme Court, to which the writ of error in this cause was directed.

See *Record*, p. 100.

The Error Complained of.

The error here complained of is that the State statute drawn in question in the cause, and alleged by the plaintiff to be in conflict with the constitutional provision forbidding the passage of a "*law impairing the obligation of contracts*"—*was held to be valid.* Also, that it deprived the plaintiff of property without due process of law.

See *Record*, pp. 73, 74, 92 and 93.

Extract from the opinion of the Court below. (*Record*, pp. 92 and 93.)

"It is further urged that the act is *unconstitutional, because it assumes to provide a mode whereby land of the Road Board may be taken from it without its consent, and by compulsion and coercion transferred to another*, upon payment of a sum fixed by arbitrators in the selection of whom the Board does not participate. *It is argued that such legislation* IMPAIRS THE OBLIGATION OF CONTRACTS," &c.

See *Bridge Proprietors* v. *Hoboken Co.*, 1 Wall. 116, 142.

Phillips' Prac. (5th Ed.) 117.

49 *N. J. Law R.*, p. 641. (Report of case below.)

BRIEF OF ARGUMENT.

The act in question is a "law impairing the obligation of contracts," and repugnant to the Constitution of the United States, and as such deprived the plaintiff of property without due process of law.

1. By the supplementary act quoted in the former part of this brief, it is enacted that "lands and real estate" *struck off and sold to the Board* "*may be held and sold, assigned and disposed of by said Board for the use of the county,* WITH ALL THE RIGHTS AND PRIVILEGES OF A PURCHASER AT SUCH SALE." (See *ante*, p. 2.)

Under this enactment the Board became vested "with ALL THE RIGHTS AND PRIVILEGES OF A PURCHASER," for fifty years, of the land in question, by virtue of a *contract executed.*

2. The real object of this proceeding under the act in question, is to impair and annul the obligation of that contract, and take for the *private use of the defendant*, the property so *vested in the Board.*

It is admitted that a municipal or public corporation may be abolished or modified at any time, but so may private corporations of recent creation. It is admitted, moreover, that in the line of *political* legislation, the power of the legislature is almost unlimited in respect to municipal or public corporations; but it is insisted, nevertheless, that such corporations, *so long as they are permitted to exist, are under the protection of the constitutional provision against enactments* "*impairing the obligation of contracts,*" so far, at least, as regards what may be termed their private property.

"It [the municipal corporation] can hold and own property only for corporate purposes, and its powers are liable at any time to be so modified by legislation as to render the property no longer available. Moreover, the charter rights may be altogether taken away; and in that case the legislature has deprived the corporation of its property by depriving it of corporate capacity to hold it. * * * * * *

"*But whether the State can directly interfere and take away the corporate property*, or convert it to other uses than those for which it was procured, or whether on repealing a charter of incorporation it can take to itself the corporate property and dispose of it at its discretion, *are different questions from any raised by the indirect and incidental interference referred to.*"

Cooley's Con. Lim., (6th Ed.) p. 289.
Id., pp. 289–290.

The same author, referring to cases in the Supreme Court of the United States, says: "They draw a distinction between the *political* rights and privileges conferred on corporations, and which are not vested rights in any sense implying constitutional permanence, and such rights in property as the corporation acqures, *and which in the view of these decisions, are protected by the same reasons which shield similar rights in individuals.*"

Id., p. 290.

☞ "THE RULE UPON THE SUBJECT we take to be this: When corporate powers are conferred there is an implied contract between the State and the corporators, *that the property which they are given the capacity to acquire* for corporate purposes under their charter, *shall not be taken from them and appropriated to other uses.* If the State grants property to the corporation the grant is an EXECUTED CONTRACT which cannot be revoked.

"*The rights acquired, either by such grants or by any other legitimate mode in which such a corporation can acquire property, are* VESTED RIGHTS AND CANNOT BE TAKEN AWAY."

Id., p. 291.
See *Wade's Retroactive Laws*, Sec. 56.
Grogan v. *San Francisco*, 18 Cal. 590, (1861.)
People v. *Batcheller*, 53 N. Y. 128, 140, 141, (1873.)
People v. *Mayor, &c., Chicago*, 51 Ill. 17, (1869.) S. C. 2 Am. Rep. 278.
Town of Milwaukee v. *City of Milwaukee*, 12 Wis. 83, (1860.)
People v. *Tappan*, 29 Wis. 664, (1872.)
People v *Hurlbut*, 24 Mich. 44, (1872.)
People v. *Common Council of Detroit*, 28 Id. 228, *237–242*, (1873.)
Benson v. *Mayor, &c., of N. Y.*, 10 Barb. 223, *240–3*, (1850.)
Milam County v. *Bateman*, 54 Texas, 153, (1880.)
People v. *Porter*, 26 Hun. 622, (1882.)
Montpelier v. *East Montpelier*, 29 Vt. 12, (1856.)
Atkyns v. *Town of Randolph*, 31 Vt. 226, (1858.)
Windham v. *Portland*, 4 Mass. 390.
Hampshire v. *Franklin*, 16 Mass. 76.
Bodoinham v. *Richmond*, 6 Me. 112.
1 *Dillon on M. C.*, (4th Ed.) § 68, p. 112, note 1, p. 114, note 1, and § 69.

☞ "*The power of making bargains for individuals has not been delegated to any branch of the government.*"

Per BRONSON, *J.*, in *Taylor* v. *Porter*, 4 Hill. 143.

"They [municipal corporations,] may also be empowered to take and hold *private property* for municipal uses; *and such property is invested with the security of other private rights.*"

2 *Kent's Com.* 275.

Montpelier v. *East Montpelier*, 29 Vt. 12, (1856,) (*cited supra.*)

[*Extract from Opinion of Isham, J.*]

"While the legislative power (to enlarge, restrain, or even destroy municipal corporations, as the public interest may require,) may be exercised over public and municipal corporations, it has as uniformly been held *that towns and other public corporations may have private rights and interests vested in them under their charter; and as to those rights, they are to be regarded and protected the same as if they were the rights and interests of individuals, or of private corporations*, and grants of property in trust for other than corporate and municipal use, (that is, as we understand, for private, as distinguished from public purposes,) are no more the subject of legislative control than are the private and vested rights of individuals."

Atkyns v. *Town of Randolph*, 31 Vt. 226, (1858,) (*cited supra.*)

[*Extract from Opinion*]

"It is true, as was urged in the argument by the learned counsel for the plaintiff, that in some respects the legislature have a power in respects to municipal corporations that they have not in respect to private corporations or individuals. They may alter or abolish municipal corporations at pleasure, but yet, not so as to defeat the pecuniary rights of individuals against such corporations, or as depending on their existence. The legislature have the same power in respect to private corporations, when that power is reserved in the law creating them. So far as a municipal corporation is endowed by law with the power of contracting, and as such, is made capable of acquiring, holding

and disposing of property and subject to the liabilities incident to the exercise of such power and capacity, thus being invested with legal rghts as to property and contracts, and made subject to legal liabilities in respect thereto, to be ascertained and enforced by suits in the ordinary judicial forums upon the same principles and by the same means as in the case of a private corporations, *it must stand on the same ground of exemption from legislative control and interference as a private corpoation.* As to third persons who seek to enforce pecuniary liabilities against towns arising upon contract, such towns are merely private corporations or individuals, and in this respect they are not affected by the purely municipal, public and political features that appertain to their corporate existence, in virtue of, and in reference to which alone, they are subject to the absolute control of the legislature." (p. 237.)

Milan County v. *Bateman*, 54 Texas, 153, (1880,) (*cited supra.*)

Opinion of the Court by BOWNER, *J.*

[*Extract.*]

"Counties in their relation toward the State may be viewed in a two-fold aspect; one which pertains to their *political* rights and privileges; the other to their rights of property.

"Over the *former*, the legislature, as the representative of State sovereignty, can exercise absolute power, unless restricted by the organic law. If it could not exercise such power over the delegated political rights and privileges of counties which are sub-divisions of State governmental authority, we might have a system of petty discordant governments within a government, without unity of design or action.

"Hence, the political rights and privileges delegated to counties are not within the constitutional prohibitions against retroactive laws and those which impair vested rights. *Cooley's Con. Lim.* 237; *People* v. *Morris*, 13 Wend. 331.

"*A different principle, however, obtains as regards the rights of counties to property which they may acquire. Such rights, as a general rule, are protected by the same constitutional guaranties which shield the property of individuals. Cooley's Con. Lim.*, 237, 277; *Grogan* v. *San Francisco*, 18 Cal. 590.

"*Even though the State itself may have donated the property, it thereby becomes such a vested right as will be protected. Wade on Retroactive Laws*, § 56; *Grogan* v. *San Francisco*, 18 Cal. 590."

Grogan v. *San Francisco*, 18 Cal. 590, (1861,) (*cited supra.*)

Opinion of the Court, by FIELD, *C. J.*, (now of the U. S. Supreme Court):

[*Extract.*]

"So far as municipal corporations are invested with subordi-"nate legislative powers for local purposes, they are mere in-"strumentalities of the State for the convenient administration "of the government, and their powers are under the entire con-"trol of the legislature; they may be qualified, enlarged, re-"stricted or withdrawn at its discretion. But these bodies, says "KENT, 'may also be empowered to take and hold private prop-"erty for municipal uses, and such property is invested with the "security of other private rights.' (*Com.*, 2 Vol., 275.) 'It may "also be admitted,' observes Mr. Justice STORY, in his opinion "in the case of *The Trustees of Dartmouth College* v. *Wood-"ward*, 'that corporations for mere public government, such as "towns, cities and counties, may in many respects be subject to "legislative control. *But it will hardly be contended that, even "in respect to such corporations, the legislative power is so "transcendant that it may, at its will, take away the private "property of the corporation or change the uses of its private "funds acquired under the public faith.*' (4 Wheat. 694.) "'The inhabitants of the city of New York,' says the Su-"preme Court of New York, 'have a vested right in the "city hall, markets, water works, ferries and other public prop-"erty, which cannot be taken from them any more than their "individual dwellings or storehouses. Their rights, in this "respect, rest not merely upon the Constitution, but upon the "great principles of eternal justice, which lie at the foundation "of all free governments.' (*Benson* v. *The Mayor of New "York*, 10 Barb. 245.) *The authorities are all to the same pur-"port. A legislative grant is an executed contract, and as "such, is within the clause of the Constitution of the United "States, which prohibits the States from passing any law "impairing the obligation of contracts.* This was expressly

"decided by the Supreme Court of the United States in *Fletcher* "v. *Peck*, 6 Cranch, 137. It cannot, therefore, be destroyed, "and the estate be divested by any subsequent legislative enact- "ment. And though a municipal corporation is the creature of "the legislature, yet when the State enters into a contract with "it, the subordinate relation ceases, and that equality arises "which exists between all contracting parties. *And, however* "*great the control of the legislature over the corporation, it* "*can be exercised only in subordination to the principle which* "*secures the inviolability of contract.*"

Hampshire v. *Franklin*, 16 Mass. 76, (*cited supra.*)

[*Extract from Opinion of* PARKER, *C. J.*]

"The inhabitants of the county of Hampshire are the plaintiffs in the suit, claiming one-third of the expenses of grand and traverse juries for all the terms of the Supreme Judicial Court, from the time of passing the act of 1812, c. 124, to the time when a term of the said Court was established by law within the county of Franklin. This they claim by virtue of the express provision of the third section of that statute. The defendant county has interposed its claim, which is to be considered as filed according to law, for a due proportion of the balance in the treasury of Hampshire, arising from funds to which Franklin had contributed while a part of Hampshire, by virtue of the first section of the same statute. *This claim of the defendant is resisted on the ground that the provision of the statute, under which it is claimed, cannot have the force of law, or create any obligation upon the plaintiffs; because it is in the nature of a retrospective act, purporting to create a liability, where none existed before.*

"*It certainly must be admitted that, by the principles of every free government and of our Constitution in particular, it is not in the power of the legislature to create a debt from one person to another, or from one corporation to another, without the consent, express or implied, of the party to be charged.* If nothing was due from Hampshire to Franklin before the pass ing of the act, which requires the former to pay to the latter a proportion of money in the treasury belonging to Hampshire, it would be evident that such a requisition must have been made

by the legislature through mistake; and it would not be within the constitutional power of any judicial Court to enforce such an act.

* * * * * * *

"We think, therefore, that the statute of 1812, *ex vigore suo, had no operation as law; because the object and effect of it was to* REQUIRE THE COUNTY OF HAMPSHIRE TO PAY OUT OF ITS TREASURY MONEY WHICH, BY THE PRECEDING LAWS, BELONGED TO THAT COUNTY, TO THE COUNTY OF FRANKLIN; *which latter county, before the passing of this statute, had no legal right to that money.*

"By general principles of law, as well as by judicial construction of statutes, if a part of the territory and inhabitants of a town are separated from it, by annexation to another, or by the erection of a new corporation, the remaining part of the town, or the former corporation, retains all its property, powers, rights and privileges, and remains subject to all its obligations and duties; unless some provision to the contrary should be made by the act authorizing the separation.

"The same principles will apply with equal force, when a county is divided. By the act, then, separating Franklin from Hampshire, all the property and credits remained to the latter county, as well as all the obligations and duties which had accrued before the division. THE ADDITIONAL ACT, THEN, DEPRIVED THEM OF RIGHTS WHICH HAD BEFORE BECOME VESTED, AND, FOR THE REASONS BEFORE STATED, COULD NOT HAVE ANY BINDING FORCE."

---

3. The mistake of the Court below arose from inferring the right of the legislature to impair the obligation of contracts of a public or municipal corporation, *from its possession of the power to create and destroy such a corporation.*

See *Record*, p. 95.

The fallacy of this argument will appear by applying it to the contracts of *private* corporations which are equally subjects of legislative creation and abolition.

The learned Justice, who spoke for the Court below, further says: "*The land did not become the property of the Board,* * * * * The land was held in the corporate name of the Board *as the property of the public,*

subject to the right of redemption during fifty years, and subject also to the control of the legislature."

Record, p. 95.

This begs the whole question and shows a forgetfulness of what the legislature really enacted on the subject, which is as follows:

"That such lands and real estate [assessed for benefits] as are not bid for when offered for sale or for re-sale, pursuant to the fifteenth section of the act to which this is a further supplement, *shall be struck off to said Board*, by its corporate name, *for the term of fifty years, and may be held and sold, assigned and disposed of* BY SAID BOARD *for the use of the county*, WITH ALL THE RIGHTS AND PRIVILEGES OF A PURCHASER AT SUCH SALE, *and subject to the same conditions and limitations.*"

The land *did* become "*the property of the Board*," though as trustee for the county.

The Board had both the *jus tenendi* and *jus disponendi*, "with ALL *the rights and privileges of a purchaser*;" that is, of *any individual* purchaser.

It thus appears that the *rights* of the Board are as *fully vested, as complete and as* SACRED as those of an individual purchaser; and it is submitted that the act in question is void for the reasons stated, and that the judgment should be reversed.

JOHN W. TAYLOR,
Of Counsel for the Plaintiff in Error.

MAR 11 1891
JAMES H. McKE
CL

ACTS CONSTITUTING

AND

RELATING

TO THE

Essex Public Road Board.

NEWARK, N. J.:
L. J. HARDHAM, PRINTER AND BINDER.
1888.

ACTS CONSTITUTING

AND

RELATING

TO THE

Essex Public Road Board.

NEWARK, N. J.:
L. J. HARDHAM, PRINTER AND BINDER.
1888.

INDEX.

SECTIONS.

Alteration of Grade, Damages for 11, 27, 81
" " Surveys 67
Appeal from Award of Appraisers, and proceedings thereon, 33, 66
" must be taken in sixty days 66
" may be Noticed for Trial by either party 66
Application for Appraisers, to whom, and how made 31
" " Assessors, " " " 35
" " New Roads, how laid 40
Appraisers of Damages, how appointed 31
" Oaths of 31
" Meeting of 32
" may adjourn 32
" shall view premises 8
" shall hear parties and witnesses 8, 32
" shall award compensation 32
" shall make a statement or report 32
" shall file report in Register's office 32
" may be recalled 67
Appraisements of Damages, how made 8, 31, 32, 33, 88
Assessors of Benefits, how appointed 35
" Oaths of 36
" to have copies of appraisements, with maps 36
" Meeting of 36
" may adjourn 36
" to report to the Board 36

Assessments for Benefits, how made 36, 46, 97
" not to be set aside for informality, &c..... 15
" a lien on land assessed.....15, 36, 54, 81
" how reviewed..... 36, 97
" when due, and how collected..... 15, 37
" for expense of curbing, &c..... 54
" for expense of macadamizing..... 63, 64
" rebate allowed if paid within three months.... 42
" may be divided in certain cases..... 93
" Act for compromising, &c.....104–108
Avenues—Frelinghuysen, Springfield, South Orange, Park, Bloomfield and Washington avenues may be laid out, &c..... 24
" when may be laid out in Newark..... 24
" Powers of Board in respect to..... 25, 88
" Width of..... 25, 91
" how to be constructed..... 27, 48
" may be macadamized..... 63, 80
" Cost of, how paid..... 30
" may be constructed in sections..... 48, 92
" certain additional Avenues may be laid out, names of, how to be constructed, and how paid for and maintained..... 58, 61
" Acts repealed for laying out Essex, Midland and Lincoln avenues..... 79
" Townships to be paid Damages for, in certain cases, 88, 89
Benefits, (see Assessments for).
Board, Members of, how and for what term elected or appointed.....1, 17, 44, 102
" " " to take and file an oath..... 1
" " " to give bond..... 1
" and their agents, &c., may enter on lands, &c..... 3
" may take lands for road purposes..... 4

Board to have an office in Newark..... 5
" may fill vacancies in certain cases..... 17
" Salaries of members..... 17, 44
" may lay out, &c., certain avenues..... 24, 58
" may lay out, &c., other roads, on application..... 40
" to cause surveys and maps to be made..... 10, 26
" to notify appraisers and parties of meeting to appraise 32
" to lay copies of appraisements before Assessors..... 36
" may review Assessments for Benefits..... 36
" may appoint a Collector of Assessments..... 37
" to have powers of Overseers and Surveyors of Highways..... 38
" may purchase or condemn turnpikes..... 39
" may Curb Sidewalks, &c..... 54
" may locate Horse Railroad tracks..... 55
" may contract for removal of buildings..... 65
" may purchase gores, &c..... 65
" may agree with land owners as to damages for change of grade..... 65
" may alter surveys, when..... 67
" may recall appraisers, when..... 67
" to make report annually..... 19
" may apportion upon lands assessed, damages, by reason of alteration of grade..... 81
" may apportion assessments, in certain cases..... 93
" may purchase at sale..... 95
Bonds may be issued by Chosen Freeholders to raise money for Road Board..... 16
" in what form and manner issued.....16, 43, 50
" on what terms to be disposed of..... 50
" Assessments pledged for redemption of..... 16
" to be received at par for assessments in certain cases, 51
" when to be canceled..... 51

Bridges and Culverts to be built at expense of County..... 53
Central avenue, under control of Board..... 70
Certiorari, writ of, must issue within sixty days after approval of assessment..... 82
Collector, Board may appoint..... 37
" of County to deposit moneys to credit of Board... 16
Compensation of members of Board.....17, 44, 102
" of Court, Appraisers and Assessors..... 18
" for property taken or injured. (See *Damages*).
Cost and expense of making avenues, how paid.....30, 58, 89
" " " new roads, how paid..... 40
" " maintaining avenues and roads, how paid.....20, 40, 58
" " macadamizing.....63, 64, 100
Costs of Appeal, by whom paid..... 33
Curbing may be done by Board, when..... 54
" Assessments for, how made..... 54
Damages, how estimated..... 8
" Benefit not to be deducted from..... 8
" to be given for alteration of grade.....11, 27, 81
" to be given for buildings as well as lands..... 28
" to be given for turnpike roads taken 39
" when to be paid..... 13
" County may be sued for..... 41
Expense of making and maintaining avenues. (See *Cost and Expense.*)
Fees of Court and Officers. (See *Compensation*).
Freeholders, Board of, to give approval before construction, 80
Grade, Damages to be allowed for alteration of.....11, 27, 81
" " for, how assessed.....11, 27, 81
Horse Railroad Tracks, Board may locate..... 55
Lands may be taken for avenues, &c..... 4
" Compensation for. (See *Damages*).

Lands when to be paid for..... 13
" Assessments a lien upon.....15, 36, 54
" may be sold for Assessments..... 15
" how sold 15, 95
" may be redeemed. 15
" Assessments a lien upon.....15, 36, 54
Macadamizing may be done by Board.....63, 64, 80, 98, 109
Maps of Lands, &c., to be made..... 10, 26
" to be signed by Board..... 26
" what to contain..... 10, 26
" when to be open for public inspection..... 5, 26
" Correction of..... 26
" to be deposited in office of Board..... 26
" Duplicate of, to be filed in Register's office, when.. .. 26, 91
" of Lands assessed to be made and filed..... 36
Milburn, Act for relief of township of..... 85, 86
Mortgagees, Rights of, upon sale of lands..... 15
Newark, when Board may lay out avenues in..... 24
Notice of Sale of Lands for Assessments..... 15
" Board not to lay out avenues, &c., in Newark without, 24
" of Maps being open for inspection..... 26
" of Application for Appraisers..... 31
" of Meeting of Appraisers..... 32
" to be in writing..... 34
" how published, &c..... 34
" when persons entitled to, are unknown.. 54
" of Meeting of Assessors 36, 84
" of Filing Maps and Reports of Assessments..... 36
" to be given by Board, of Meeting to receive objections to assessments, &c..... 36
" to be given to Board, of objections to assessment.... 36
Overseers, Board to have powers of..... 38
Pavement by Telford process authorized.....63, 64, 109

Pavement expense of, how paid.....63, 64, 109
" to be kept in repair by Board..... 109
Re-assessments, how made..... 97
Report to be made annually by Board..... 19
" of Appraisements, filing, &c..... 32
" of Assessors to be made and filed..... 36
" " " what to contain..... 36
" " " proceedings on..... 36
Sale of Lands for Assessments..... 15, 95
" " " proceedings on..... 15
" " Buildings and Improvements..... 27
Springfield avenue to be laid out and constructed in Millburn before January 1, 1877..... 85
Surveyors of Highways, Board to have powers of..... 38
Surveys and Maps to be made of avenues..... 26
" " how made, and proceedings thereon..... 26
" may be altered..... 67
Townships to be paid damages, in certain cases..... 88, 89
Turnpike made may be purchased or taken..... 39
Width of Avenues..... 25, 91
" " other roads..... 27
" " Sidewalks..... 27

[LAWS OF 1869, PAGE 957.]

ACT OF INCORPORATION.

AN ACT CONSTITUTING A PUBLIC ROAD BOARD FOR THE LAYING OUT, CONSTRUCTING, APPROPRIATING, IMPROVING AND MAINTAINING PUBLIC CARRIAGE ROADS IN THE COUNTY OF ESSEX. APPROVED MARCH 31ST, 1869.

Names of Commissioners.

1. BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey*, That Aaron B. Baldwin, George Peters, William H. Murphy, Jesse Williams and Robert M. Hening, and their successors to be appointed and elected as hereinafter provided, be and they are constituted a Board of Commissioners to be known and designated as "The Essex Public Road Board," for the purpose of laying out, constructing, appropriating, improving and maintaining free carriage roads in the County of Essex; that the acts of a majority of said Commissioners shall be deemed the acts of the Board; and that each of said Commissioners, and their successors, shall, before entering upon the duties of his office, take and file in the office of the County Clerk of said county an oath or affirmation to act faithfully and impartially in the execution of

Each Commissioner to take and file oath, &c.

the trust imposed in him by this act, and each shall give bond to the County Collector of said county in the sum of ten thousand dollars, with three sufficient sureties to be approved by the Finance Committee of the Board of Chosen Freeholders of said county, conditioned for the faithful performance of his duties under this act, which bond in case of forfeiture shall be prosecuted by said County Collector for the use of the said county.

And give bond.

Section 2 repealed.

3. The said Board, their agents, engineers-surveyors, and others in their employ, shall have full power to enter at all times upon lands for any of the purposes contemplated by this act.

May enter upon lands.

4. Any lands and real estate deemed necessary by the said Board for the laying out, constructing, widening, straightening, or other improvement, of any road, may be taken therefore and damages shall be allowed, and benefits assessed by the said Board to and against the persons owning the lands so taken and benefited respectively, as hereinafter provided.

And take any lands deemed necessary.

Damages and Benefits to be assessed.

5. The said Board shall have an office in some convenient place in the City of Newark for the transaction of their business, and for the reception and safe custody of their books, maps and other documents, which office shall be kept open on all ordinary business days, between the hours of ten and three o'clock, and which books, maps and other documents, shall, between the hours above named, be always open to the examination of parties claiming to be interested therein.

Office, and time of keeping open.

Section 6 repealed.

Section 7, (providing for the appointment of five free holders, to assess damages and benefits,) repealed and supplied by 31–35.

8. The said five freeholders so appointed, or a majority of them, shall give at least twenty days' notice in two daily newspapers of the said county, of the time and place of their meeting, to make such assessments of damages and benefits, and that no other notice to parties interested shall be required; [*the above provisions as to notices superseded. See post,* 32, 34, 36, 45,] and when so met the said freeholders or a majority of them shall view the premises, and shall have power to examine witnesses, upon oath or affirmation, (to be administered by any one of their own number), and to adjourn from time to time, and that after a full investigation, they, or the said majority of them, shall make such assessments separately, and in favor of or against the said owner or owners of said lands and real estate, as the case may be, and shall make a report thereof in writing, to the said Board, without unnecessary delay;—[and that after the like notice of the time, place and purpose of the the meeting, (no other or further notice being required) the said Board shall review and consider the said assessments, and every one of them, and shall and may by the resolution, and by a vote of a majority of their whole number, adjust, ratify and confirm the same, with or without alteration, as to them may seem fit, and shall then cause the same to be recorded in the minutes of their proceed-

Appraisers may examine and swear witnesses.

Power of Com'rs missioners to alter and ratify assessments.

ings; and that at said meeting of said Board, it shall be their duty to receive and consider any objections to said assessments, or any of them that may be presented in writing by any person or persons claiming to be aggrieved thereby]. (See 32, 36). And that in assessing said damages the said freeholders and the said Board shall have due regard both to the value of said lands and real estate so taken, and the injury to said owner or owners thereof, without making any deduction or allowance for benefits, because or by reason of the laying out, constructing, reconstructing, widening, straightening, or other improvements of said road, or said part or parts thereof. (See 31, 36.)

Section 9 repealed.

When assessments are confirmed, a map shall be made with names of owners.

10. When any such assessments shall be so adopted, ratified and confirmed, the said Board shall cause to be prepared, and shall carefully file in their office a map showing all the lands and real estate upon or by reason of which the said assessment hath been made, with the boundary lines of the several parcels, and the names of the several owners thereof, as far as the said Board have been able to ascertain the same; *provided*, however, that none of the proceedings to be had under this act shall be held to be invalid because of any unintentional defect or error in the said map or any part thereof. (See 32, 36).

Damages for alteration of grade to be assessed.

11. If in widening, straightening, constructing, reconstructing, or otherwise improving and maintaining any existing public road, or any part or parts thereof in said county, any alteration of the

grade of said road shall be made, the damages which may have been occasioned thereby to the owner or owners of any lands and real estate upon the line of said road, shall be ascertained and assessed by five freeholders, or a majority of them, in the same way as damages for lands and real estate taken in the laying out of a new road; and that such damages for the alteration of the grade shall be added to and form a part of the cost aforesaid, and be assessed, and borne and paid in the same manner. (See 27).

Section 12 *repealed.*

Lands taken to be paid for in six months after the adoption of the assessment.

13. The said damages for lands and real estate taken, or for the alteration of the grade of any road, when so assessed, shall become due and payable to the several owner or owners of said lands and real estate so taken or damaged, at the expiration of six months from the time when said assessment shall have been adopted, ratified and confirmed by the said Board; and interest shall become due and payable thereon from and after the expiration of the said six months, unless the said Board shall sooner enter upon and take possession of the said lands and real estate, in which case interest shall accrue from and after the date of such entry and taking possession; and that in the event of said damages and interest not being paid on demand after the expiration of the said six months, the said owner or owners may sue for and recover the same, with costs, from the said Board (see 41) in an action on the case, in any court having cognizance thereof; and that the proceedings of said freeholders and

said Board shall be held and taken in said action a conclusive against the defendants therein.

Section 14 *repealed.*

Assessments shall be liens upon the lands until paid.

15. Any and all assessments which may be made under and by virtue of this act (except only assessments of damages for lands and real estate taken, and for the alteration of the grade of any road,) shall be and remain liens upon the lands and real estate benefited as aforesaid, from and after the time or times, when the said assessments were so adopted, ratified and confirmed by the said Board, until the same shall be fully paid or collected; and that every assessment made as aforesaid shall be payable and collectible in four equal annual installments in one, two, three and four years, respectively, from the date of such assessment, unless the person or persons assessed shall elect to pay the same sooner and in one payment, in which case he or they shall be at liberty so to do, and shall be allowed a proper rebate of interest thereon (see 42); that if any installment of such assessment shall remain unpaid in whole or in part for six months after the same shall become due and payable, the whole or any balance of such assessment, notwithstanding anything hereinbefore contained, shall thereupon become due and collectible, and may be sued for and collected by said Board in their corporate name, in an action on the case, against the owner or owners of such lands and real estate respectively, in any court having cognizance of the amount sued for, or the said Board may proceed to advertise said land and real estate upon which said

Assessments payable in four annual installments.

assessment may be a lien, to be sold at public auction, at the Court House of said county on some day not less than two months distant, between two and five o'clock in the afternoon; that such advertisement shall be published for the space of time aforesaid next preceding the sale, in at least three newspapers of said county, at least once in each week; that said advertisement shall be the only notice required, and shall contain the names of the land owners in default, if the same be known, together with the amounts due by them respectively, and a short description of their said land and real estate, so assessed as aforesaid; that at the time of said sale the several parcels of said land and real estate shall be openly sold to the person or persons who will take the same for the shortest period of time, not exceeding fifty years from the day of sale, and shall pay to the Board, before the close of the sale, the full amount due upon said unpaid assessment, with interest thereon from the time of the same being made, at the rate of seven per centum per annum, and also such sum as the Board shall determine to be a fair proportion of the expenses of advertising and conducting the sale; that in the event of any purchaser neglecting to make such payment as aforesaid, he shall forfeit all claim to said land and real estate, and the same shall be re-sold by the Board at their convenience upon such advertisement as aforesaid; that the Board may adjourn the sale from time to time by making public proclamation thereof at the time of such adjournment; that as soon as practicable after

Lands may be sold at auction.

How advertised.

How sold.

When re-sold.

the close of the sale, the Board shall make and deliver to any purchaser thereat who shall have made such payment as aforesaid, a certificate of sale under their hands and seals, and duly acknowledged according to law, setting forth, as concisely as may be, the facts of said assessment, advertisement and sale, together with a description of the lands and real estate so sold, the amount actually paid therefor by said purchaser, and the length of time for which he shall have so purchased the same; that said certificate shall, before its delivery, be recorded in one of the books to be kept by the Board for such purpose; that said certificate may be assigned, by deed of assignment under seal duly acknowledged as aforesaid, and that such assignment may be recorded in the books of said Board, upon the payment of a fee of one dollar therefor; that if at the end of three years from the day of sale, said land and real estate shall not have been redeemed by said owner or owners, his, her, or their legal representatives, or any mortgagee, or mortgagees thereof, or any judgment creditor or creditors, or any other person or persons, having a legal or equitable interest therein, by the payment to the said Board for the benefit of said purchaser, his heirs or assigns, of the amount originally paid by said purchaser, and any other tax or assessment which he may have paid and of which he may have given written notice to said Board, together with interest on such payments, at the rate of fifteen per centum per annum, the Board shall upon the surrender of said certificate execute and deliver to said pur-

Certificate of sale to the purchaser.

Certificate to be recorded.

Lands may be redeemed in three years after sale.

Fifteen per cent. may be charged on unpaid assessments.

chaser, his legal representatives or assigns, a declaration of sale, under their hands and seals, and duly acknowledged as aforesaid, briefly stating the facts of said assessment, advertisement and sale, together with a description of said land and real estate, and a statement of the time for which the same has been so sold; that said declaration of sale shall be recorded in the books of said Board, and also in the records of deeds in the office of the Register of said county, upon the payment of a fee of one dollar in each case; that until the recording of such declaration, the time for redeeming said land and real estate as aforesaid shall remain open, notwithstanding the said term of three years may have expired; that such declaration shall be presumptive evidence in all courts and elsewhere that such sale and proceedings were regularly made and had, according to the provisions of this act; and such purchaser or purchasers, and his, her, or their legal representatives shall, by virtue thereof, lawfully hold or enjoy such lands and real estate, with the rents, issues and profits thereof, for his, her, or their own proper use against the owner or owners thereof, and all persons claiming under him, her, or them until the term shall be completed and ended for which the purchaser or purchasers shall have agreed to take the same as aforesaid, and no longer; being liable for any injury or waste done or committed in the same manner as a tenant for a term of years; but no mortgagee whose mortgage shall have been recorded or registered before any such sale, shall be divested of his rights in and to

Declaration of sale to be recorded.

Declaration of sale evidence of regularity of sale.

Purchaser liable for waste

Rights of mortgagee.

said lands and real estate, unless six months' notice of such sale shall be given to him, in writing, by such purchaser or any person or persons claiming under him, which notice shall be served personally, if said mortgagee be a resident of the said county, and if not, shall be addressed to his place of residence as stated in said mortgage or assignment thereof; that if any such land and real estate shall be so redeemeed by any judgment creditor or mortgagee, he shall have a lein on said land and real estate for the amount actually paid by him as aforesaid, with legal interest thereon, to be collected and recovered in the same manner and at the same time as if included in the mortgage or judgment; and that no assessment or sale shall be set aside or declared invalid, because of any error in the name of any land owner or because of the omission to name him or her when unknown to the Board, or because of any slight error or inaccuracy in the description of said land and real estate in any of the proceedings, provided the same be so described as to be easily identified.

Assessments not to be set aside on account of any error in name.

Collector of the County to deposit funds to the credit of the Road Board.

16. The Collector of the County of Essex is hereby authorized and directed to deposit to the credit of the "Essex Public Road Board," with such bank or trust company as shall be designated by any order of the said Board, any and all such sum or sums of money as said Board may from time to time require and direct to be so deposited, for payment of any assessment of damages as aforesaid, or for payment of the cost of any work, services or material, done or furnished under any

contract, proceeding or otherwise, for surveying, locating, laying out, opening, regulating, grading, constructing, reconstructing, maintaining or otherwise improving any road, or any part or parts thereof, the construction or maintenance of which by law is or shall be under the direction, control and management of said Road Board, or for payment of any incidental costs and expenses of said Board, specifying in their said order upon said Collector, for what particular purpose or purposes, or upon what particular work or proceeding said money is required; and to enable the said Collector to raise such money and to deposit it as aforesaid without delay, the Board of Chosen Freeholders of the said county is hereby authorized, empowered and required to borrow from time to time in the name of the Board of Chosen Freeholders of the County of Essex, by the issue of bonds to be signed by the Director and countersigned by the Collector, and payable at any time not exceeding five years (Sec. 43), and bearing such rate of interest as said Board of Chosen Freeholders may deem proper, not exceeding seven per centum per annum, any and all such sum or sums of money as may be necessary to pay all such damages, costs and expenses incurred or to be incurred as aforesaid; and whenever such damages, costs and expenses, or any part thereof, is afterwards collected by assessment from the property benefited by such improvement, the proceeds of such assessments, so to be laid and collected for each and every such improvement, are hereby pledged for the redemp-

Board of Chosen Freeholders may issue bonds.

Assessments pledged for redemption of bonds.

tion of the bonds so to be issued, and the remainder or deficiency necessary for the redemption of said bonds; and the interest thereon shall be certified by said Collector to the said Board of Chosen Freeholders as soon as the same shall be ascertained by him, and be by the said Board of Chosen Freeholders, included and raised in the then next annual levy for annual taxes in the County of Essex, and be applied to the final and full redemption of said bonds and the interest thereon; and that it shall be the duty of the said Road Board to pay to the said Collector all moneys collected or received by them for assessments for benefits, as soon as the same shall be so collected or received.

Salaries of Commissioners.

17. The said Commissioners shall receive a salary of one thousand dollars each, to be paid quarterly by the County Collector, and shall hereafter be elected and appointed as follows, that is to say, one of them shall be annually appointed by the Board of Chosen Freeholders of said county, at their stated annual meeting on the second Wednesday in May, eighteen hundred and seventy, to hold office for the term of one year; and the other four shall be elected by the legal voters of said county at the same time and in the same manner as memmers of the General Assembly are elected; and at the election for members of the General Assembly in the year eighteen hundred and seventy, two Commissioners shall be elected to serve one year, and two to serve for two years, the ballots to be separate and to designate the time of service; and at the election for members of the General Assem-

Appointment of one Commissioner by the Board of Chosen Freeholders.

Two Commissioners to be annually elected.

bly, to be held in the year eighteen hundred and seventy-one, and every year thereafter, there shall be elected two Commissioners, each of whom shall hold office for the term of two years, and no ballot shall be counted in any election for Commissioners which shall contain the name of more than one person to serve as such Commissioner; the two persons who shall receive the highest number of votes shall be declared duly elected; the five Commissioners so appointed and elected in the year eighteen hundred and seventy, shall enter on the discharge of their duties on the first Monday of January, eighteen hundred and seventy-one; and the terms of office of those subsequently elected and appointed shall commence on the first Monday in January next after their election and appointment; and any vacancy that may occur in said Board, by death, resignation, or otherwise, shall be filled by the said Road Board at a meeting called for that purpose; the appointment made shall be only for the residue of the term of office so vacated. (Sec. 44).

Board may fill vacancies.

18. The following and no other fees shall be allowed and taken for the hereinafter mentioned services, namely: to the Justice of the Supreme Court or of the Inferior Court of Common Pleas, for any appointment of freeholders, and for administering to them the oath or affirmation herein required, the sum of five dollars; and to each freeholder so appointed, the sum of three dollars for every day's service by him rendered.

Compensation to Court and Freeholders.

19. The said Road Board shall lay before the

Annual Report.

Director of the Board of Chosen Freeholders of said county annually, on or before the first day of May, a full and detailed account or report of the receipts and disbursements of said Road Board for the year preceding, to the end that the same may be submitted by said Director to said Board of Chosen Freeholders.

Cost of maintaining roads by the County.

20. All roads constructed or reconstructed by the said Board, whether laid out or appropriated, and taken in charge by them, shall thereafter be maintained and kept in repair by them at the expense of the said county.

Sec. 21 *repealed.*

Sec. 22 *repealed.*

Repealer.

23. The act entitled "An act constituting a Public Road Board, for the laying out, constructing, appropriating, improving and maintaining public carriage roads in the County of Essex," approved April seventeenth, eighteen hundred and sixty-eight, and all other acts and parts of acts inconsistent with the provisions of this act, be and the same are hereby repealed, and that this act shall be deemed and taken to be a public act, and shall take effect immediately.

[LAWS OF 1870, PAGE 181.]

Supplement Approved February 16, 1870.

Commissioners to lay out certain avenues.

24. SEC. 1. The Commissioners and their successors, constituting, by the act to which this is a supplement, "The Essex Public Road Board," are hereby authorized and empowered to lay out, construct, appropriate, improve and maintain, for the purpose of free carriage roads in the County of Essex, the following named avenues in the County of Essex, namely:

Frelinghuysen avenue.

I. Frelinghuysen avenue, beginning at Astor street, in the City of Newark, and running thence through the said City of Newark and the Township of Clinton to the line of the County of Union.

Springfield avenue.

II. Springfield avenue, beginning in Market street, in said city, and running thence through said city, and the townships of Clinton, South Orange and Milburn to the line of the County of Union.

South Orange avenue.

III. South Orange avenue, beginning at Springfield avenue, in said city, and running thence through said city and the townships of East Orange, South Orange, Milburn and Livingston to the line of the County of Morris.

Park avenue

IV. Park avenue, beginning at Bloomfield avenue, in said city, and running thence through

said City of Newark and the township of East Orange, the town of Orange, and the townships of West Orange and Livingston to the line of the County of Morris.

Bloomfield avenue.

V. Bloomfield avenue, beginning at Belleville avenue in the City of Newark, and running thence through said city and the townships of Woodside, Bloomfield, Montclair and Caldwell to the line of the County of Morris.

Washington avenue.

VI. Washington avenue, beginning at Belleville avenue, in the City of Newark, and running thence through the townships of Woodside and Belleville to the line of the County of Passaic, shall not exceed in width seventy-five feet, (Sec. 47);

No other roads to be laid out by Board except upon application of property owners.

and that so much of said act as authorizes or empowers the said Board to lay out, construct, appropriate, improve or maintain any other road or roads in said county, (except upon the application of property owners, as hereinafter provided for,) be and the same is hereby repealed; *provided*,

Not to lay out avenues in City of Newark except after twenty days' notice.

that it shall not be lawful for the said Road Board to lay out, construct, appropriate or maintain such parts of said avenues or any of them as lie within the city of Newark, until the said Board shall have given notice for twenty days in two newspapers published in said city, of their intention to lay out and construct said avenues within the said city; and

Common Council may lay out the avenues within City of Newark, when.

if within the period of ninety days from the first publication of said notice the Common Council of the City of Newark shall, by resolution of said Council, declare it to be their intention to lay out, open, construct and maintain for the purposes

mentioned in this act, so much and such parts of the said avenues as lie within the limits of the said city, it shall then be their duty to lay out, construct, appropriate, improve, and maintain so much of the said avenues as lie within the limits of said city, and the said Common Council shall thereupon proceed to lay out, open and construct said avenues in the manner now provided by law for laying out, opening, vacating, straightening, altering and widening streets, roads and highways in the said city; but if the said avenues shall not be laid ont and constructed as aforesaid, within the said city, by the Common Council of the City of Newark, within six months from the date of the passage of said resolution, the said Road Board shall proceed to lay out, construct, appropriate and maintain the said avenues within the limits of the City of Newark, the same, and to all intents and purposes, as if this proviso had not been enacted; *provided*, that it shall not be lawful for said Board to alter the present lines of said avenues within the limits of the City of Newark.

Board to lay out the avenues in Newark, when.

25. SEC. 2. The said Board are hereby authorized and vested with all the rights and powers necessary and expedient to survey, lay out, locate, construct, reconstruct and maintain the said avenues and roads, and to vacate such part or parts of existing roads as may be necessary therefor, in the County of Essex, for the convenience of public travel by carriages and other vehicles in said county, which said avenues shall be deemed and taken to be public roads or highways, and shall be of such width as to the

Powers of the Board.

said Board may seem advisable; *provided*, that such parts of said avenues as extend west of the summit of the First Mountain, shall not exceed in width seventy-five feet and the residue of said avenues shall not exceed in width one hundred feet.

Width of avenues.

Surveys and maps.

26. SEC. 3. The said Board shall cause to be made an accurate survey or surveys of the said avenues, with a map or maps thereof, showing the termini and routes of said avenues, including the courses and distances and the various improvements through which the same will pass, and also the names of the several owners or reputed owners of the lands through which said avenues pass, and also the names of the several owners of land proposed to be taken therefor, so far as the same can be conveniently ascertained, and showing also where the present streets and roads as now used are coincident with, or fall within the lines of the avenues hereby authorized to be constructed, and also where those streets and roads which are now in actual use do cross said avenues; and the said Board shall at their discretion appoint a place or places and day or days when, between certain hours, the said map or maps will be open to public inspection, either at their office in the City of Newark, or at some place or places in the vicinity of said avenues; that the Board shall give previous notice of such appointment by an advertisement published for at least ten days in two daily newspapers printed in said county; that in such advertisement only such short description of said avenues as proposed shall be required as shall be sufficient to identify the same; that no notice to land

Board to appoint places and times when maps will be open for public inspection, by ten days notice in two newspapers.

owners or other parties interested shall be necessary, other than that contained in said advertisement; that the Board may adjourn and continue such public inspection of said map or maps from time to time as they may appoint and publicly declare at any meeting; and they shall attend such meeting or meetings, and shall examine and inquire into any complaint or objection presented by any land owner or taxpayer for the purpose of ascertaining and determining as to the best manner of laying out, locating, widening or straightening the said avenues or any of them; that the Board after such full inquiry shall lay out, locate, construct, widen or straighten said avenues, with or without alteration of the original survey, as to them may seem fit, and that such determination of the Board shall be by a resolution entered upon the minutes of their proceedings, setting forth the courses and distances of said avenues in words at full length; *provided*, however, that in case of any alteration of the original survey or surveys, a new and corrected map or maps shall be prepared in the manner aforesaid, and shall, after being signed by a majority of the said commissioners, be deposited in their said office, and also that a duplicate of such original or corrected map or maps, as the case may be, shall within thirty days after such determination of the Board, be filed by them in the office of the Register of the said county.

May adjourn inspection.

Maps to be deposited in office of the Commissioners and in the Register's office.

27. SEC 4. The said Board shall construct said avenues by excavating and removing earth, rocks, trees, stumps, buildings, and all other impediments or improvements, and disposing of such portions

How Avenues constructed.

thereof as are not needed in the construction of said avenues, to the best advantage, at public auction; and filling up any low parts of the route, and otherwise preparing the premises for said avenues, and by building all bridges on said avenues, and all necessary culverts pertaining to the same; *provided*, the said avenues shall not be constructed upon any grade different from that established by the municipal authorities (if any has been established) without the consent of such municipality, and in such case compensation shall be made to the person or persons injured (if any there shall be who are injured by such alteration of grade); and that such damages for the alteration of grade shall be estimated as part of the money necessary to pay the compensation in this act directed to be made, and shall be raised, assessed and collected as hereinafter mentioned; the construction of said avenues shall be in such substantial manner as will combine hardness, evenness and durability with economy; *provided*, that nothing herein contained shall be construed as authorizing the said Board to macadamize or pave any of said avenues. [These avenues, or certain portions thereof, may now be macadamized.] (See 63.) The said Board, or their successors in office, shall determine the width of the carriage way and of the sidewalks, except all such avenues and streets as lie within the corporate limits of the City of Newark, and relay in their proper place, and so as to conform to the Board's plans, all curbing and flagging that they shall take up in constructing said avenues; but the local authorities are to curb

Grade established by municipal authorities not to be altered without their consent, and compensation to persons injured.

Not to be paved or macadamized.

Width of sidewalks and carriageway.

and flag the other sidewalks which it shall be proper to curb and flag, as the said several municipalities are now authorized to do with reference to said sidewalks, and to keep the same in repair. (See 63.)

Owners of land, &c., entitled to compensation.

28. SEC. 5. The owners of that part of the lands over which the said avenues are authorized to be laid, which is not already lawfully in public use, shall be entitled to compensation for the use thereof hereby authorized, and the owners of every building or part thereof, or other improvement which it shall be necessary to remove, take down or destroy, shall be entitled to compensation for such building or part thereof so to be removed, taken down or destroyed.

Moneys to pay for lands taken to be raised by assessing lands benefited.

29. SEC. 6. The moneys necessary to pay the compensation in this act directed to be made for land or property taken, shall be raised by assessing so much thereof, as shall be equal to any peculiar benefit conferred upon any lands in the county, whether adjacent or not to said avenues, upon such lands so peculiarly benefited, in proportion to the benefit received; if said moneys shall exceed the value of the benefits conferred upon the lands last mentioned, such excess (if any) shall be borne by the public at large of the County of Essex, and shall be raised by tax, as other taxes are levied and raised in said county, and shall be paid by the County Collector. (See 46 and 56.)

30. SEC. 7. The money necessary to pay the cost and expenses of executing this act, and of the laying out, opening and constructing the said

Cost of laying out avenues, &c., to be paid in ten annual installments, one-half by the county of Essex and the other half by the townships.

avenues, and also the amounts of rebates allowed upon assessments for benefits, as hereinafter provided, together with the interest on said several moneys, shall be paid in ten annual installments, one-half thereof by the County of Essex, to be raised by county tax in the same manner as other county taxes are raised in said county, and the other half by the several cities, towns and townships in or through which the several avenues pass, to be levied and collected by the same officers, in the same manner, and at the same time that the other city, town and township taxes are levied and collected; but the officers so collecting said moneys shall pay the same to the County Collector under the same provisions and regulations as county moneys are now paid by them to the County Collector; *provided*, that no one of the said cities, towns or townships shall be liable to a greater extent than to the amount of one-half of the said costs, expenses and amounts, with the interest accruing on it, except as to the liability for its quota of the tax to be raised by the County of Essex as aforesaid; and *provided*, that if the Common Council of the City of Newark shall lay out and construct so much of said avenues as lie within the limits of the said city as aforesaid, the damages and entire costs of laying out, opening and constructing said avenues in the said City of Newark, shall be levied, raised, assessed, collected and paid as is now provided by law for the laying out and opening of streets in said city.

So much of said avenue as laid out by City of Newark to be paid for by it.

31. SEC. 8. It shall be the duty of the Court of

Common Pleas in and for said county, upon the application of said Board, from time to time, and after ten days' notice of such application by an advertisement in two daily newspapers in said county, to appoint five disinterested freeholders residing in said county appraisers, who shall, after having severally taken and subscribed before a judge of said court, an oath or affirmation to act fairly and impartially in the matter intrusted to them, according to the best of their skill and judgment, be empowered to make a fair, just and impartial appraisement of the damages sustained by the owner or owners of any lands and real estate or buildings, to whom compensation is to be paid as provided in this act.

Court of Common Pleas to appoint five appraisers of damages for lands, &c., taken.

32. SEC. 9. The said Board shall from time to time give ten days' notice to the proper appraisers and to the persons entitled to compensation, on what day and at what hour and place they will ask the said appraisers to hear evidence, as to the compensation for the lands or buildings of the persons so notified, and at such time and place and any other time and place to which said appraisers may adjourn, they shall hear the Board and the parties interested if they appear, and the witnesses of the Board and of said parties, and determine the compensation that ought to be paid to the persons so notified, and openly and publicly declare the amount thereof, and then or afterwards by writing signed by them or a majority of them, make a statement of their proceedings and said adjudication, which statement shall be filed in the office of

Ten days' notice to be given to the appraisers and the persons entitled to compensation.

Statement by appraisers to be filed in Register's office.

the Register of the County of Essex; and it, as well as said notices, shall contain a carefully prepared description of the boundaries of the land for which compensation is to be made, and state whether there are any, and what kind of building or part of building thereon, for which also compensation is to be made.

What to contain.

Proceedings upon appeal.

33. SEC. 10. If the person to whom such compensation shall be awarded, is, or the said Board are, dissatisfied with the amount thereof, either party may appeal from the said adjudication to the Circuit Court of the County of Essex, which is hereby given jurisdiction to rehear the said matter, and to cause a proper issue to be framed to try the question of compensation, and to have the same tried by a jury, as an issue out of the Supreme Court in a civil action is tried in the said court, but such appeal shall not restrain the Board from constructing said avenues over said lands and removing said buildings, if said compensation found by said appraisers shall have been tendered; if the jury shall find more than the appraisers, the costs of such appeal shall be paid by the Board, but if the jury find less or confirm said amount, the costs of appeal shall be paid by the owner; in case any parties entitled to compensation cannot be found to whom to pay the same, or are unknown, or labor under legal disabilities, payment of such compensation in the Circuit Court of the County of Essex, shall be equivalent to the payment of the parties entitled to the same.

Notices to be in writing.

34. SEC. 11. All notices required by this act,

unless otherwise provided, shall be in writing, and shall, if the person reside in the County of Essex, be served personally upon the party entitled to notice or left at his or her usual place of abode; or if such party does not reside in the county, or is an infant, or a lunatic, or an idiot, such notices shall be published in such newspapers, published in the County of Essex, as the Board shall determine, for double the length of time that notice personally served is required; and in case the persons entitled to notice, or any of them are unknown, a general notice to those to whom it may concern shall be published in like manner; and in the case last mentioned, there shall also be a notice posted on some part of the premises of the party interested of the effect of such notice last mentioned.

How served and published.

35. SEC. 12. The said Court of Common Pleas on request of said Board, shall appoint five honest, competent and judicious freeholders, assessors, to perform the duties required of the said assessors, under this act; said application and appointment shall be filed in the Clerk's office of the County of Essex.

Court of Common Pleas to appoint five freeholders to assess benefits.

36. SEC. 13. The said Board shall cause to be laid before the said assessors a copy of all the appraisements made under the ninth section of this act, with proper maps; and the said assessors, after taking an oath to honestly and justly perform the duties required of an assessor under this act, shall proceed to consider and determine what lands in said county (see 46) are peculiarly benefited by

Proceedings by the assessors.

the laying out of said avenues, and the amount that each lot or parcel is so benefited, and shall assess the same in proportion to the benefit received; and said assessors shall give at least ten days' public notice of their meeting to perform the duties required of them by this act, specifying therein generally the purpose of said meeting, and being once met, the said assessors may adjourn from time to time, until the purpose of those assembling may have been accomplished, but no notice of any adjourned meeting shall be necessary; they shall make a report to said Board in writing, of their said determinations and assessments, and shall accompany the same with at least one map, and at least one schedule for every city, town or township in which said benefits shall be assessed; and the names of the owners or reputed owners of the lots shall be written upon the lots or parcels as laid down in said maps, or it shall be stated that the owners are unknown, and there shall be as many duplicates of said report as there are cities, towns and townships, in which benefits are assessed, in the Clerk's office of each one of which said report shall be filed, and there shall be a duplicate of each of said maps and schedules, one of which said duplicate maps and schedules shall be filed in the Clerk's office of the city, town or township to which it relates, for the examination of the public; the original report and maps and schedules shall be temporarily lodged in the office of the Clerk of the County of Essex for the examination of the public; and the said clerks of said cities, towns

To give ten days' notice of their meeting.

To report to the Board their assessments.

Report and maps to be filed.

and townships shall respectively, within ten days thereafter, give notice of the filing of said reports, and maps and schedules in their said offices, by posting for two weeks notices in five public places in their city, town or township; and said Commissioners shall give a like notice by advertising the same in two newspapers published in said county for two weeks in every issue of such newspapers; and the notice of said Board shall also state a time and place, when and where the said Board will meet, to receive objections in writing to said report, assessment and determination; if any person or corporation aggrieved by said assessments and determinations, by any act or thing upon which the same are, or is founded, shall not give to said Board notice of his said aggrievance or complaint and of the grounds thereof, in writing within twenty days after the filing of said report, he, she, or it shall be deemed to have waived such ground of complaint, and the said Board shall receive and consider the said objections so made in writing, and if any of them appear to be well founded, they shall require the said assessors to review the said assessment and make a new report upon the same, readjusting the assessment; but in making such review or readjustment, said assessor shall not readjust any assessment on any land lying outside of the city, town or township in which the land lies, the assessment on which they are required to review and readjust; the said assessment shall be a lien on the said lot or parcel of land until the same

Notice of filing to be given.

Board to give notice of meeting to receive objections to report.

Notice of objections to be given to Board in twenty days after filing report.

Assessment a lien on the land assessed.

shall be paid, from and after the date that the said Commissioners shall approve of such assessment, and said Board shall approve of all said assessment, that they do not require said assessors to review and readjust, and as to that part of said assessment, they shall approve of that, so soon as the assessment shall have been reviewed and readjusted, if the same shall appear to have been readjusted properly; and in case the said assessment or any act of said assessor shall be removed to any court of review, the said assessment shall not be set aside for any excess of assessment, unless it appear that the said assessment was greater than the actual benefit the said laying out and opening of said avenue was to any lot or parcel of land on which said reviewed assessment may have been made, and the said court of review, in case they set aside such assessment, shall appoint the same or other assessors to review the said assessment, and readjust the same and re-assess the lands, the assessment upon which shall so have been reviewed before the said court, and said assessors so appointed by said court shall add to the assessment the costs and expenses of such review in said court, and of said re-assessment.

Proceedings on review.

How assessments collected.

37. SEC. 14. The assessments for the benefits required to be paid by this act shall become due and shall be collected as is provided in the fifteenth section of the act to which this is a supplement; and the said Board may, in their discretion, appoint a collector to receive any moneys, due for assessments, and may require such collector to give

Board may appoint collector.

a bond to the said Board, in such sum and with such sureties as they may designate, for the faithful performance of the duties of his office, and the said Board shall, by resolution, fix the amount of compensation to be paid to such collector; the said Board shall also have power to appoint such other agents and officers as they shall deem necessary for the purpose of carrying into effect the purposes of this act.

Board to have the powers of overseers and surveyors of highways.

38. SEC. 15. In addition to the powers conferred by this act, it shall be lawful for the said Board, and their authorized agents, to use and exercise, for the purpose of this act, all the powers and privileges belonging or appertaining to overseers and surveyors of the highways, under any general law or laws of this State, so far as the same may be used and exercised consistently with the foregoing provisions of this act.

Turnpike roads may be taken.

39. SEC. 16. The said Board is hereby authorized and empowered to purchase or take (compensation being first made), any turnpike road in said county, or such part or parts thereof as may be necessary for the purposes of this act, and the damages sustained by the taking of any turnpike road, or any part thereof, shall be ascertained upon like application, and in the same manner as is hereinbefore directed where any lands or buildings are taken for the purposes of this act, and the compensation paid or damages appraised shall be assessed upon the lands peculiarly benefited, and otherwise collected, paid and raised in the same manner, and to all intents and purposes as is hereinbefore provided

Compensation to be made.

for assessing, collecting and paying for lands or buildings taken for the purposes of this act.

How other roads may be laid out.

40. SEC. 17. The said Board may, at their discretion, and in pursuance of this act and of the act to which this is a supplement, lay out, construct, appropriate, improve and maintain, for the purposes of free carriage roads as aforesaid, any existing road, or may lay out and construct any new road, whenever application in writing shall be made to the said Board for that purpose by the owners of [more than one-half in lineal measurement of the land fronting] on the line of any such road now existing, or proposed new road; but the money necessary to pay the expenses of laying out, opening, and constructing any such roads, and the compensation in this act directed to be made to property owners for lands or buildings taken, shall to the amount and in proportion to the benefit received, be assessed upon the lands in said county peculiarly benefited thereby, in the manner hereinbefore provided for; if the amount of the said costs, expenses and compensation shall exceed the value of the benefits conferred upon the lands assessed for such benefits, such excess (if any) shall be borne, raised and paid by the county as hereinbefore provided for in relation to said avenues; and the proceedings in and for the laying out, constructing, appropriating, improving and maintaining any such roads, shall be the same in all respects as are provided in respect to the laying out, constructing appropriating, improving and maintaining the said avenues.

When suit may be brought against the county.

41. SEC. 18. In the event of the damages and interest mentioned in the thirteenth section of the act to which this is a supplement, not being paid as therein provided for, a suit for the same with costs may be brought against the said county, and not against the said Board as is in said section provided.

Persons paying assessments in three months entitled to rebate of 12 per cent.

42. SEC. 19. If any person or persons assessed for benefits in pursuance of this act and of the act to which this is a supplement, shall elect to pay the assessment against him or them in one payment, within three months from the date of such assessment, he, she or they shall be entitled to a rebate of twelve per centum upon the amount assessed against him, her or them.

County bonds when payable.

43. SEC. 20. The bonds authorized and required to be issued by the Board of Chosen Freeholders of the County of Essex, by virtue of the sixteenth section of the act to which this is a supplement, shall be payable in ten years, with the interest thereon, and that it shall be lawful to raise by taxation as a part of the county tax of the said County of Essex, money to pay said bonds or any portion thereof, or the interest thereon. (See 16, 50, 51).

Term of office of commissioners, their appointment, election.

44. SEC. 21. The Commissioners now constituting the Essex Public Road Board shall respectively hold their office for the term of [four] years from the first Monday in January, eighteen hundred and seventy, and their successors in office shall be appointed and elected in the year eighteen hundred and seventy-three, at the same times, in

the same manner and for the same terms as is now provided by the act to which this is a supplement, for their appointment and election in the year eighteen hundred and seventy; and their subsequent appointments, election and term of office shall be at the same time, in the same manner, and for the same term as is provided in the seventeenth section of said act; and the said Commissioners shall receive an annual salary of one thousand dollars each, to be paid quarterly by the County Collector.

Repealer.

45. SEC. 22. The second, sixth, seventh, ninth, twelfth, fourteenth and twenty-second sections of the act to which this is a supplement, and such other parts of said act as are inconsistent with the provisions of this act, and all other acts and parts of acts inconsistent with this act, be and the same are hereby repealed, and this act shall take effect immediately.

[LAWS OF 1870, PAGE 714.]

Supplement Approved March 17, 1870.

No lands to be assessed for benefits except for land taken in same township, &c., where said lands are situated.

46. SEC. 1. No lands in any city, town or township, in which any avenue—named in the supplement to the act to which this is a further supplement, approved the sixteenth day of February, eighteen hundred and seventy—shall be laid out by said Board, shall be liable to be assessed for benefits to pay the compensation to be made for land or property taken which shall not lie within such city, town or township; but the lands in any city, town or township, through which any of the said avenues shall be laid out, which shall be peculiarly benefited thereby, shall be liable to the extent and in proportion to the benefit received for the lands or property taken therein only; but in all other respects except as herein provided, the moneys necessary to pay the compensation for lands or property taken shall be raised as in said supplement directed.

First section of supplement of February 16, 1870, amended.

47. SEC. 2. The first section of the supplement to the above entitled act, approved February sixteenth, eighteen hundred and seventy, be amended in reference to Washington avenue by striking out the words "shall not exceed in width seventy-five feet."

Avenues may be constructed in sections.

48. SEC. 3. It shall be lawful for the said Board to lay out and construct said avenues or any of them in sections, of so much of said avenues or any of them, as is embraced in any city, town or township; and any of said sections may, in the discretion of the said Board, be first laid out and constructed, and the damages for land or property taken therefor, may be appraised, and the benefits assessed and collected in pursuance of the said supplement before the residue of any of the said avenues shall be constructed or worked.

Twenty-first section of act of March 31, 1869, repealed.

49. SEC. 4. The twenty-first section of the act approved March thirty-first, eighteen hundred and sixty-nine, to which this is a further supplement, be and the same is hereby repealed, and this act shall take effect immediately.

[LAWS OF 1871, PAGE 175.]

Supplement Approved February 2, 1871.

50. SEC. 1. BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey*, That the twentieth section of the act supplemental to the above entitled act, which supplemental act was approved February sixteenth, eighteen hundred and seventy, be, and the same is hereby amended by striking out therefrom the words "in equal annual installments," and that the bonds heretofore issued by the Board of Chosen Freeholders of the County of Essex, payable on the first day of July, one thousand eight hundred and eighty, and bearing date the first day of July, one thousand eight hundred and seventy, and such bonds as the said Board of Chosen Freeholders shall hereafter issue payable at any time not exceeding ten years, with interest, and signed and countersigned as provided in the sixteenth section of said act, to enable the collector of the County of Essex to raise money for the purposes in said act and supplemental act mentioned, shall be and they are hereby declared to be valid, and shall be paid as is provided for in said acts for the payment of the bonds therein mentioned, which said bonds it shall be lawful for the said Board of Chosen

Repealer.

Certain bonds heretofore issued made valid.

Freeholders of the County of Essex, to sell and negotiate at public or private sale for the best price that can be obtained therefor.

Terms of sale or negotiation bonds.

51. SEC. 2. AND BE IT ENACTED, That the said bonds shall be received by said Road Board at par, in payment of the benefits assessed in pursuance of the said act, when the same shall be tendered in sums not exceeding the amount in any one case assessed, and the bonds so tendered and received shall be delivered and paid to the Collector of the County of Essex, and shall be received by him at par, and he shall return to the said Board of Chosen Freeholders the said bonds so paid and received for benefits, which said Board shall thereupon cancel the same.

52. SEC. 3. AND BE IT ENACTED, That the fourth section of the said supplemental act be, and the same is hereby amended by striking out the words "excepting Bloomfield avenue, which shall be macadamized."

Bridges and culverts to be made at expense of county.

53. SEC. 4. AND BE IT ENACTED, That all bridges and culverts built and constructed by the said Road Board shall be built and constructed at the expense of the County of Essex.

Board may curb sidewalks when requested in writing.

54. SEC. 5. AND BE IT ENACTED, That the said Road Board shall have power to curb the sidewalks on any of the said avenues or section of any avenue mentioned in this supplemental act, when requested in writing so to do by the owners of the majority of the land, counting by lineal measurement on the line of any of the said avenues or section of an avenue, to prescribe the

manner in which the said work shall be performed, and to cause the expense thereof to be assessed on the adjoining lots, whether improved or unimproved, and collected as hereinafter mentioned; and it shall be lawful for the said Board to curb one side of any of said avenues or a section thereof, when requested by the owners of a majority of the land on the line of the side of the avenue or section intended to be curbed; and the said Road Board, when they shall curb any avenue or section or side thereof, shall ascertain the whole amount of the costs and expenses of such curbing, and shall make a just and equitable assessment thereof upon the owners of the lands and real estate on the line of said avenue or section or side of an avenue, giving ten days' previous notice in two newspapers published in the County of Essex, of the time and place when the said Board will meet to make such assessment, stating generally in said notice the avenue or such section or side thereof as they may intend to curb; and the said assessment when made shall be and remain a lien upon the lands and real estate so assessed until paid, and shall be collected in the same manner as is provided in said act for collecting assessments for benefits.

Expense, how assessed and collected.

55. SEC. 6. AND BE IT ENACTED, That the said Road Board shall have power to locate the tracks of any horse railroad which may be hereafter constructed or relaid over any of said avenues, and the tracks of such railroad shall be laid on such part of said avenues as said Board

Board may locate tracks of horse railroads on avenues.

shall direct; and all trees shall be planted on said avenues, and all gas and water pipes shall be laid thereon, under the direction and supervision of said Board.

56. SEC. 7. AND BE IT ENACTED, That the sixth section of the said supplemental act be, and the same is hereby amended by striking out therefrom the words "provided such benefit shall not exceed fifty per cent. of the assessed value of any property for the year eighteen hundred and sixty-nine," and said proviso is hereby repealed.

57. SEC. 8. AND BE IT ENACTED, That this act shall take effect immediately.

[LAWS OF 1871, PAGE 947.]

Supplement Approved March 28, 1871.

58. SEC. 1. BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey*, That the Essex Public Road Board, in pursuance of said act, and the several supplements thereto, is hereby authorized and empowered to lay out, construct, appropriate, improve and maintain for the purpose of free carriage roads in the county of Essex, the following named avenues in the county of Essex: ESSEX AVENUE, beginning at the Newark and Pompton Turnpike, in the village of Montclair, opposite the junction of Church street and Fullerton avenue, and running thence through the township of Montclair to Walnut street, at or near the western line of land conveyed by Matilda H. Crane to the Montclair Railway Company; and thence to Watchung avenue, at a point about twelve hundred feet westward of the highway known as the Telegraph road, and said Board may extend the said avenue to the Mount Hebron road, at or near its intersection with said Telegraph road; MIDLAND AVENUE, beginning in the northern line of said township of Montclair, at the intersection therewith of the western boundary of lands of Amos Broadnax, and running thence to said Watchung avenue, at the eastern

Board may construct new avenues.

Essex avenue.

Midland avenue.

boundary of land formerly of F. Martel; thence to Church street in said township, abount two hundred feet eastward from the public flag staff, near the public school house in said village; thence to Park avenue, in the town of Orange, or in the township of West Orange; thence to South Orange avenue, in the township of South Orange; and thence to Springfield avenue, in the township of Millburn; RIDGEWOOD AVENUE, beginning at Main street, or at Park avenue, in the town of Orange, and running thence through the townships of East Orange and Bloomfield to the line of the county of Passaic; also LINCOLN AVENUE, beginning at a point on the stage road to Paterson, in the township of Bloomfield, about one hundred feet south of the south line of land of Cecile G. Dunscomb; and running thence to the angle in a highway which was laid out across lands of the Montclair Railway Company and of Eliza C. Wilde, on the twenty-ninth day of June, eighteen hundred and seventy; thence westward through and along said highway; and thence to the highway known as the old road leading from Bloomfield to Montclair; *provided*, that the money necessary to pay the expenses of laying out, opening and constructing said avenues, and the compensation by the said acts directed to be made to property owners, shall in all respects be raised, assessed and paid as is provided in the seventeenth section of the act supplemental to the above entitled act, which supplemental act was approved February sixteenth, one thousand eight hundred and seventy; and the

Ridgewood avenue.

Lincoln avenue.

Expense, how assessed and paid.

How to be laid out, &c.

proceedings in and for the laying out, constructing, appropriating, improving and maintaining said avenues, shall be as therein provided for in relation to the roads therein mentioned. (See 40, 61.) *And provided further*, that the expense of maintaining said avenues after the same shall have been laid out, opened and constructed, shall be paid by the respective townships through which the same may be laid out.

59. SEC. 2. AND BE IT ENACTED, That the said seventeenth section of the said supplemental act be amended by striking out the words "two-thirds of the land," and substituting in lieu thereof the words "more than one-half in lineal measurement of the land fronting."

60. SEC. 3. AND BE IT ENACTED, That this act shall take effect immediately.

[LAWS OF 1872, PAGE 1,096.]

Supplement Approved April 3, 1872.

61. SEC. 1. BE IT ENACTED, *by the Senate and General Assembly of the State of New Jersey*, That it shall be lawful for "The Essex Public Road Board" to lay out and construct the avenues named in and authorized by the act supplemental to the act to which this act is a furthur supplement, which said supplemental act was approved March twenty-eighth, eighteen hundred and seventy-one, or any or either of them, in sections of so much of said avenues, or any of them, as the said Board may determine upon; and any of said sections may, in the discretion of the said Board, be first surveyed, laid out, constructed, appropriated and improved; and the damages for the land and property taken therefore may be appraised, and the benefits assessed and collected as provided by law in respect to the whole of said avenues, before the residue or remaining part or parts of any or either of them shall so be surveyed, laid out, constructed, appropriated, or improved; *provided*, that it shall not be lawful for said Board to lay out or construct any or either of the avenues in said supplement authorized, or any part or parts thereof, within the limits of the town of Orange, or township of South

Avenues authorized by Act of 1871, may be constructed by sections.

Proviso.

Orange, nor to assess any property in said town or township, for the laying out, constructing appropriating, improving or maintaining thereof.

62. SEC. 2. AND BE IT ENACTED, That all acts and parts of acts, so far as they conflict with the provisions of this act, be and the same are hereby repealed, and that this act shall be deemed and taked to be a public act, and shall take effect immediately.

[LAWS OF 1872, PAGE 1,269.]

Supplement Approved April 4, 1872.

63. SEC. 1. BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey*, That it shall be lawful for the Essex Public Road Board, and the said Board is hereby authorized and empowered to macadamize, according to the Telford process, to the width of not more than twenty feet upon each, so much and such parts of the carriage-ways of the several avenues mentioned and defined in the first section of the act supplemental to the above entitled act, which said supplemental act was approved February sixteenth, eighteen hundred and seventy, as lie within the following bounds, to wit: the carriage-way of Frelinghuysen avenue, from the Newark city line to the Union county line, of Springfield, South Orange, Park and Bloomfield avenues, severally, from the Newark city line to the summit of the first mountain, and of Washington avenue, from the Newark city line to the Passaic county line, in such manner and with such material as the said Board shall judge best for the public interest; and that the cost thereof, including all expenses connected therewith, shall be assessed and paid in the same manner as now provided by law in respect to the laying out, opening and con-

Board may macadamize certain avenues.

Cost thereof, how assessed.

structing of the said avenues; *provided*, however, that such part of said cost and expenses as shall be raised and paid in the City of Orange, shall be certified by said Road Board unto the Board of Assessments of said city, and shall thereupon be assessed and collected, and shall be a lien upon lands and real estate, in the same manner as assessments for laying out and opening streets in said city are or shall be made. Proviso as to City of Orange.

64. SEC. 2. AND BE IT ENACTED, That whenever a petition in writing shall be presented to said Board, signed by the owners of a majority of the land, counting by lineal measurement, on the line of any of the portions of said avenues designated in the first section of this act, or upon any portions or sections thereof as may lie between two points named in said petition, requesting to have so much of the carriage-way as lies between the said points named, as may not be macadamized or determined so to be by said Board at the date of said petition, macadamized, the said Board may proceed to macadamize the same, and to prescribe the manner in which said work shall be performed, and to cause the expense thereof, when the same shall have been ascertained, to be assessed on the adjoining land, the basis being the lineal measurement thereof lying between the points designated in said petition; and the proceedings for the collection of said assessment shall be the same as is provided in the fifth section of the act supplemental to the act to which this is a supplement, which said supplemental act was approved February second, eighteen hundred Cost of macadamizing, when petitioned for, may be assessed on adjoining land.

and seventy-one, in relation to the assessment therein provided for.

65. SEC. 3. AND BE IT ENACTED, That it shall and may be lawful for said Board, whenever in their judgment it shall be advisable or conducive to the public interest, to contract with the owner or owners of any buildings or parts of buildings which it is or may become necessary for them to remove in the prosecution of their work, for the removal of the same by the said Board without the appointment of appraisers to assess the damage sustained by such owner or owners on account of the removal of any such buildings or parts of buildings, and to pay such damage agreed upon to such owner or owners out of any moneys set to the credit of the said Board for the purposes mentioned in the sixteenth section of the act to which this act is a supplement; and the said Board may in like manner contract with and pay the owners thereof for any parcels or gores of land which have been or may be inadvertently omitted in the surveys of said Board, and which it is or may become necessary for them to acquire, and may also in like manner contract with and pay damages to the owners of land and other property which may be damaged by reason of the alteration of the grade on any of said avenues by said Board.

Board may contract for removal of buildings without the intervention of appraisers.

May contract and pay for gores and parcels of land omitted in survey.

May agree with owners as to damages for alteration of grade.

66. SEC. 4. AND BE IT ENACTED, That all appeals which may hereafter be taken from the awards of appraisers or commissioners who have been or who may hereafter be appointed to assess damages under any of the provisions of the act, to which

Appeals from appraisements to be within sixty days.

this is a supplement, or the several supplements thereto, shall be so taken within sixty days from and after the date of the filing of the report of any such appraisers or commissioners, and either party to any appeal so taken may notice the same for trial.

Notice of trial may be by either party.

67. SEC. 5. AND BE IT ENACTED, That the said Board shall have power, before construction, to make partial alterations in the surveys and location of any of said avenues, in any such part or parts thereof, as to the said Board may seem desirable; and in case said Board shall make any such alteration or re-location, they shall cause a map of such alterations to be filed in the same manner and in the same office or offices as the original survey is required to be filed, and shall be marked and designated as an amended survey, and from the time of such filing shall supersede the original survey; and it shall be lawful for the said Board, in case they shall discover any oversights, defects or omissions on the part of the appraisers in returns of appraisements by them made, to recall such appraisers, and thereupon said appraisers shall proceed as under their original appointment and oaths, to make appraisements of and in respect to such matters as were omitted or defective in their original report, and to file a supplemental report of such new appraisements.

Board may alter surveys before construction.

May recall appraisers to correct oversights, &c.

68. SEC. 6. AND BE IT ENACTED, That the second proviso contained in the first section of the act supplement to the act to which this act is a further supplement, which said supplemental act was

Repealer.

approved March twenty-eighth, eighteen hundred and seventy-one, be and the same is hereby repealed.

Term of office changed.

69. SEC. 7. AND BE IT ENACTED, That the twenty-first section of the act supplemental to the act to which this act is a further supplement, which said supplemental act was approved February sixteenth, eighteen hundred and seventy, be and the same is hereby amended, by striking out the word "three" first occurring in said section, and substituting in lieu thereof, the word "four."

Central avenue.

70. SEC. 8. AND BE IT ENACTED, That this act and the provisions of the original act, to which this act is a further supplement, and all the supplements to said original act, except the supplement approved March twenty-eighth, eighteen hundred and seventy-one, shall be, and they hereby are, extended and made applicable in all respects to the avenue known as "Central Avenue," from the boundary line of the City of Newark, to its present terminus at Valley Road, in the Township of West Orange.

Repealer.

71. SEC. 9. AND BE IT ENACTED, That all acts and parts of acts so far as they conflict with the provisions of this act, or the act to which this act is a supplement, or of the several supplements thereto, be and the same are hereby repealed; *provided*, that nothing in this section shall be held or construed to alter or effect any of the provisions contained in the charter of Bloomfield Cemetery Company; and that this act shall be deemed and taken to be a public act, and shall take effect immediately.

[LAWS OF 1873, PAGE 424.]

Supplement Approved March 26, 1873.

72. SEC. 1. BE IT ENACTED, *by the Senate and General Assembly of the State of New Jersey*, That nothing in the provisions contained in the first section of the supplement to the act to which this is a further supplement, and which supplement was approved the sixteenth day of February, one thousand eight hundred and seventy, shall be construed to prohibit the Essex Public Road Board from causing to be assessed upon the lands within the territory formerly constituting the Township of Woodside, (but now forming a part of the Eighth Ward of the City of Newark), the damages or compensation awarded by appraisers, pursuant to said act, and the several supplements thereto, for lands and buildings taken for the laying out of Washington avenue within said territory; but that said damages and compensation shall and may be assessed, become a lien, be enforced and collected in the same manner in all respects as if said territory had not been annexed to the said City of Newark.

The compensation for right of way for Washington avenue in Woodside may be assessed on lands benefited therein, notwithstanding its annexation to Newark.

73. SEC. 2. AND BE IT ENACTED, That the power and authority vested in said Board by the first section of the supplement to said act (to which this

Power to macadamize conferred by the first section of the supplement of April 4, 1872, shall extend and apply to Central avenue and all the avenues in said section mentioned, throughout their whole course.

is a further supplement), which supplement was approved the fourth day of April, one thousand eight hundred and seventy-two, shall extend and apply to Central Avenue, and all the avenues in said first section mentioned, throughout the whole course thereof in the County of Essex.

Board may prescribe the kind of rail to be laid on any of their avenues when horse railroad tracks are authorized thereon.

74. SEC. 3. AND BE IT ENACTED, That whenever any horse railroad track shall be laid on any avenue under charge or control of said Board, the kind of rail used in the laying thereof shall be such as said Board shall prescribe.

When damages shall be increased on appeal, after they shall have been assessed by way of benefits, the Board may assess the excess and also the costs adjudged.

75. SEC. 4. AND BE IT ENACTED, That whatever the damages awarded by appraisers for property taken or injured, or for change of grade, pursuant to the act to which this is a supplement, or to any supplement thereto, shall have been assessed by assessors, upon lands deemed to be benefited, agreeably to said act, or any of its supplements, before the determination of any appeal taken by any party from said award, and upon such appeal, the damages shall be increased, the said Board shall thereupon, without the intervention of appraisers, apportion or assess the said excess or increase, including any costs adjudged, ratably upon the same lands so assessed by said assessors, and on the basis of their assessment; and such excess or increase shall be and remain a lien on said lands, and be enforced and collected in the same manner as the original assessments; and in case any of said original assessments shall remain unpaid, in whole or in part, shall be added thereto, form a part thereof, and be payable at the same

time therewith; and any damages awarded under any re-appraisement or supplemental appraisement, made in pursuance of said acts, or of the order of any competent court, shall be apportioned or assessed by said Board on the same basis, in the same manner, and be and remain a lien, and be enforced, collected, and payable in the same manner as such increase or excess adjudged on appeal.

Damages awarded on any supplemental appraisement or re-appraisement may be assessed by Board on lands benefited.

[LAWS OF 1873, PAGE 622.]

Supplement Approved April 3, 1873.

The costs and expenses of macadamizing the avenues in Newark to be certified to Common Council thereof, and thereupon to be assessed, &c., in the same manner as costs of paving therein are assessed and collected.

76. SEC. 1. BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey*, That such part of the costs and expenses authorized by and incurred under the second section of the supplement to the above entitled act, which supplement was approved March twenty-sixth, one thousand eight hundred and seventy-three, as shall be raised and collected in the City of Newark, shall be certified by the said Board to the Common Council of said city, and shall thereupon be assessed and collected and be a lien upon lands and real estate, in the same manner, so far as practicable, as assessments for paving streets in said city are or shall be made; and that all assessments for benefits made under the act to which this is a further supplement, or any supplement thereto, shall be payable with lawful interest from the time of the making thereof, and that this act shall take effect immediately.

Assessments for benefits to draw lawful interest from the time they are made.

[LAWS OF 1873, PAGE 777.]

Supplement Approved April 4, 1873.

77. SEC. 1. BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey*, That the Essex County Public Road Board are hereby instructed to report to the next session of the Legislature an accurate map of such portions of the County of Essex as are included within the limits of the improvements heretofore authorized to be made by them under acts of the Legislature already passed, together with such suggestions as they may deem proper to make in order to establish an economical system of public parks connected by boulevards or public drives, so as to furnish suitable grounds and drives for the purposes of health and recreation.

The Board instructed to report to the next Legislature an accurate map of such portions of Essex county as are included within the limits of their improvments, together with suggestions in relation to a system of parks connected by boulevards or drives for health and recreation.

78. SEC. 2. AND BE IT ENACTED, That this act shall be deemed and taken to be a public act, and shall take effect immediately.

[Laws of 1874, Page 389.]

Supplement Approved March 21, 1874.

79. Sec. 1. Be it enacted *by the Senate and General Assembly of the State of New Jersey*, That so much and such parts of any and all acts supplementary to the act to which this is a further supplement, as relates to or authorizes the laying out and construction of the avenues known and designated as "Essex avenue," "Midland avenue," and "Lincoln avenue," be and the same are hereby repealed.

Repealer.

80. Sec. 2. And be it enacted, That no contract for the construction or macadamizing of any avenue, or of any section thereof, shall be made by the Essex Public Road Board, unless a certified copy of the resolution of said Board, providing for such construction or macadamizing, shall be submitted to, and such resolution shall be approved by the Board of Chosen Freeholders of the County of Essex.

Board of Freeholders to give approval before construction.

81. Sec. 3. And be it enacted, That whenever, in the widening or straightening of any road or avenue, or section thereof, the damages awarded by appraisers for property taken or injured, pursuant to the act to which this is a supplement, or to any supplement thereto, shall have been assessed

by assessors upon lands deemed to be benefited, agreeably to said act or any of its supplements, and in the course of the reconstruction or improvement thereof, there shall be an alteration of grade and a subsequent appraisement of damages therefor, or by reason thereof, pursuant to the eleventh section of the act to which this is a further supplement, the said Board shall thereupon, without the intervention of assessors, apportion or assess the last-mentioned damages ratably upon the same lands so assessed by said assessors, and on the basis of their assessment; and the same shall be and remain a lien on said lands, and be enforced and collected in the same manner as the said original assessment; and in case any of said assessments shall remain unpaid in whole or in part, shall be added to the unpaid portion thereof, and be payable and collectible therewith.

Board may apportion upon lands, after assessment, damages appraised for alteration of grade during construction.

82. SEC. 4. AND BE IT ENACTED, That [no] writ of certiorari [shall issue] to review any assessment for benefits, or any order or proceedings preliminary thereto under the act to which this is a supplement, or any supplement thereto, unless such writ shall be allowed and issued within sixty days after the said assessment shall have been approved by said Board.

Writ of certiorari must issue within sixty days after approval.

83. SEC. 5. AND BE IT ENACTED, That this act shall be deemed to be a public act, and shall take effect immediately.

[LAWS OF 1874, PAGE 540.]

Supplement Approved March 27, 1874.

84. SEC. 1. BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey*, That the public notice required by the act approved February sixteenth, one thousand eight hundred and seventy, and supplementary to the act to which this is a further supplement, of the first meeting of the assessors of benefits, shall be given by publication thereof in two daily newspapers of the said county, daily, Sundays excepted, for the space of ten days, and that such notice shall be sufficient, and that this act shall be deemed and taken to be a public act, and shall take effect immediately.

Notice of first meeting of Assessors to be given in two papers.

[LAWS OF 1874, PAGE 750.]

An Act for the Relief of the Township of Millburn, Approved March 27, 1874.

85. SEC. 1. BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey*, That it shall be the duty of the Essex County Public Road Board, and they are hereby directed and required to proceed with and complete the laying out, opening and construction of the avenue known as Springfield avenue, through the township of Millburn to the boundary line of the County of Essex, so that the same shall be constructed and completed on or before the first day of January, one thousand eight hundred and seventy-seven.

Springfield avenue to be laid out before January 1, 1877.

86. SEC. 2. AND BE IT ENACTED, That in case the said Springfield avenue shall not be constructed and completed in and through said Township of Millburn, that then and thereafter, that is to say, from and after the said first day of January, one thousand eight hundred and seventy-seven, the said Township of Millburn, and the inhabitants thereof, and all property in said township shall be exempt from all liability to taxation or assessment, or contribution, on account of any expenditures, indebtedness, or outlay made and created, or

Township exempt from taxation or assessment.

which shall be hereafter made and created by the said Essex County Public Road Board, or for or by reason of any work or expenditure under their supervision.

87. SEC. 3. AND BE IT ENACTED, That all acts or parts of acts inconsistent with the provisions of this act, be and the same are hereby repealed, and this act shall take effect immediately.

[LAWS OF 1875, PAGE 292.]

Supplement Approved March 17, 1875.

88. SEC. 1. BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey*, That whenever the Essex Public Road Board shall hereafter enter upon and appropriate any portion or portions of any highway, which has been heretofore graded and macadamized by the legal authorities of any town or township through which it passes, they shall first cause an appraisement to be made of the value to the county of such grading and macadam, in the same manner as is provided for the appraisement for damages, in sections eight, nine, ten and eleven, of the supplement to the act to which this is a supplement, which said supplement was approved February sixteenth, one thousand eight hundred and seventy.

Townships to be allowed damages when macadamized roads are appropriated.

89. SEC. 2. AND BE IT ENACTED, That the said appraisement, when it shall have been confirmed, in accordance with the provisions of said sections of said supplement, shall form a part of the construction account of said avenue or avenues, and shall be paid over by the said Road Board, to the legal town or township authorities having jurisdiction over the highways, so entered upon and appropriated, in the same manner and time as is provided for the payment of damages for land taken by the said road.

90. SEC. 3. AND BE IT ENACTED, That this act shall take effect immediately.

[LAWS OF 1875, PAGE 420.]

Supplement Approved March 31, 1875.

91. SEC. 1. BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey*, That the said Board shall have power, before construction, to reduce the width of any avenues, or any part thereof, if they shall deem it expedient, in which case they shall cause to be filed a map of the avenue or part thereof so reduced in width, in connection with the original map or survey of such avenue.

Board shall have power to reduce width of avenues.

92. SEC. 2. AND BE IT ENACTED, That section three of the supplement to said act, which supplement was approved March seventeenth, eighteen hundred and seventy, be amended by striking out therefrom the words "of so much of said avenues, or any of them, as is embraced in any city, town or township."

Amendment.

93. SEC. 3. AND BE IT ENACTED, That where an assessment for benefits shall have been made, or shall hereafter be made under said act, or any supplement thereto, upon or against any lot or tract of land in the name or names of any several owner or joint owners thereof, and the owner or owners thereof shall desire any portion of such lot or tract released from the lien of such assess-

ment, or shall desire to have the whole amount of such assessment apportioned upon specific portions of such lot or tract, it shall be lawful for said Board to release any such portion from the lien of any such assessment, upon being paid or secured a ratable proportion of the whole assessment, and also to make an apportionment and division of such assessment, so that any specified portion of the whole lot or tract shall be held and liable only for a definite proportion of the whole assessment, and be discharged therefrom upon the payment of such proportion.

Board may apportion assessments in certain cases, and release portions upon payment.

94. SEC. 4. AND BE IT ENACTED, That section four of the supplement approved March twenty-first, eighteen hundred and seventy-four, to the act to which this is a further supplement, be amended by striking out the word "any," where it first occurs in said section, and inserting in lieu thereof, the word "no," and by inserting next after the word "certiorari," the words "shall issue."

Amendment.

95. SEC. 5. AND BE IT ENACTED, That such lands and real estate as are not bid for when offered for sale or for re-sale, pursuant to the fifteenth section of the act to which this is a further supplement, shall be struck off to said Board by its corporate name, for the term of fifty years, and may be held and sold, assigned and disposed of by said Board for the use of the county, with all the rights and privileges of a purchaser at such sale, and subject to the same conditions and limitations.

Board may purchase at sale.

96. SEC. 6. AND BE IT ENACTED, That this act shall take effect immediately.

[Laws of 1875, Page 458.]

Supplement Approved April 7, 1875.

97. Sec. 1. Be it enacted *by the Senate and General Assembly of the State of New Jersey*, That where any assessment made under said act or any supplement thereto has been or shall be set aside, only as to the prosecutor or prosecutors of any writ or writs of certiorari, by any Court of review, the Court or any judge thereof shall thereupon order a new assessment and appoint the same or other assessors to re-assess the amount of the assessments so set aside, together with the lawful interest accrued thereon, the costs and expenses of such review, and of such re-assessment, to be estimated and laid before them by the Essex Public Road Board; and said assessors so appointed shall proceed as provided in respect to the original assessment, and report to the said Board; but in making such re-assessment, no tracts or lots of land originally assessed for the benefits of the said improvement, and the original assessments upon which shall not have been set aside, shall be liable to be re-assessed, but the same shall be exempt from such re-assessment, and that this act shall take effect immediately.

Re-assessment to be made when assessments are set aside.

Lands originally assessed to be exempt from re-assessment.

[Laws of 1879, Page 17.]

Approved February 4, 1879.

An act defining the power of public road boards in the macadamizing of public roads and avenues in this State.

98. Sec. 1. Be it enacted *by the Senate and General Assembly of the State of New Jersey*, That whenever any public road board of this state, now authorized by its charter, or the law under which it is organized, to macadamize the carriageway of any public road or avenue under its control, to a width not exceeding twenty feet, shall deem it expedient and advisable, by reason of the location of a railway track or tracks on any public road or avenue, to lay a portion of said pavement on either side of said railway track or tracks, so as to conform to the existing condition of said road or avenue, it shall be lawful for said public road board, and it is hereby authorized and empowered to macadamize, to a width of not less than ten feet, on either side of said railway track or tracks, the carriage way of any road or avenue so circumstanced as aforesaid, over which said Board now has control; *provided*, however, that no public road or avenue shall be macadamized to a width exceeding twenty feet in the whole; and, *provided* further, that nothing

Board may macadamize ten feet on each side of avenue having a railroad track.

herein contained shall in any way affect any existing law authorizing the assessment of the costs of macadamizing public roads or avenues under the control of any public road board of this state; but said costs, and all expenses connected therewith, shall be assessed upon all the property peculiarly benefited in the same manner as now provided by law, in respect to the laying out, opening and constructing of said avenues.

99. SEC. 2. AND BE IT ENACTED, That this act shall be a public act and shall take effect immediately.

[LAWS OF 1879, PAGE 247.]

Supplement Approved March 14, 1879.

A SUPPLEMENT to the act entitled "An act defining the power of public road boards in the macadamizing of public roads and avenues in this state," approved February fourth, one thousand and eight hundred and seventy-nine.

100. SEC. 1. BE IT ENACTED, *by the Senate and General Assembly of the State of New Jersey*, That the costs and expenses of macadamizing public roads or avenues under the control of any public road board of this state, shall be assessed and paid in the same manner as now provided by law in respect to the laying out, opening and constructing of avenues under the laws constituting and regulating such public road board.

Costs of macadamizing to be assessed and paid in same manner as costs of construction.

101. SEC. 2. AND BE IT ENACTED, That this act shall be a public act, and shall take effect immediately, and that all acts or parts of acts inconsistent herewith are hereby repealed.

[LAWS OF 1881, PAGE 19.]

Approved February 10, 1881.

AN ACT to reduce the expenses of public road boards, and to place them under the control of the boards of chosen freeholders of the several counties of this State

102. SEC. 1. BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey*, That the commissioners constituting the county public road boards, which now exist or may hereafter exist in any of the counties of this state, under the laws thereof, shall consist of members of the boards of chosen freeholders of said counties respectively, to be appointed in the same manner as the standing committees of the said boards of chosen freeholders are or may be appointed for the time being, which persons so appointed shall continue in office only during the time for which they shall have been elected as such chosen freeholders, but be subject to removal at the pleasure of said boards of chosen freeholders, and shall receive only such compensation for their services as such commissioners as shall be fixed from time to time by the said boards of chosen freeholders; *provided*, that no more than a major part of the commissioners of any public road board shall be of

Commissioners to be members of the Board of Chosen Freeholders, and to be appointed in same manner as committees.

the same political party; and *provided*, further, that nothing herein contained shall be construed to affect the tenure of office or compensation of any commissioner now in office and in actual service as a member of any such road board; but that every such person who duly qualified and entered on the discharge of his duties on or before the first Monday of January, one thousand eight hundred and eighty-one, and has ever since been actually serving as such member, whether elected by the people or by the said boards of chosen freeholders, under any general or special law of this state, shall be entitled to hold his said office during the time for which he was so elected; *provided*, that the provision of this act shall not apply to or affect in any way township road boards.

Tenure of office, &c.

103. SEC. 2. AND BE IT ENACTED, That all acts and parts of acts inconsistent with any of the provisions of this act, be and the same are hereby repealed, and that this act shall take effect immediately.

Approved March 31, 1882.

An act to authorize the compromising or settling by arbitration of any tax or assessment laid by any public road board in this state.

104. Sec. 1. Be it enacted *by the Senate and General Assembly of the State of New Jersey*, That it shall and may be lawful for any public road board established in this state, by majority vote of the members thereof, to compound, adjust and compromise any tax or taxes, assessment or assessments that may have been or may hereafter be laid or imposed by virtue of the powers conferred by any acts or acts, under which such public road board may have been organized or created or is now acting, or which may authorize the laying out, opening, widening or straightening of any public road, street or avenue by any public road board in this state, with the owner or owners, mortgagee or mortgagees of any lands and real estate which may have been or may hereafter be taxed or assessed for benefits for any such improvements, openings, widenings or straightenings and to acquit and discharge the lands and real estate of any such owner or owners, mortgagee or mortgagees from the lien of any such tax or assessment upon the payment of the sum or sums agreed upon in such manner and at such time as may be mutually arranged and signified by writing.

Board may compromise assessments, &c.

105. Sec. 2. And be it enacted, That in case of an application by any owner or owners, mortgagee

or mortgagees for a compromise and adjustment with any public road board in this state under the provisions of the first section of this act of any tax or taxes, assessment or assessments laid or imposed as in said section stated or for the cause therein stated, and of the failure of agreement between such board and the applicant or applicants, or the neglect or refusal of such board to act upon any such application within a reasonable time after the reception thereof, then, and in that case, it shall and may be lawful, upon ten days' notice to such board, left with the president thereof, for such owner or owners, mortgagee or mortgagees so applying, to apply by petition, duly verified, to such justice of the Supreme Court of this state as shall hold the Circuit Court of the county in which the land and real estate, or any part of it, may lay, reciting in such petition the fact of application to such board and their failure to agree with the petitioner, or their neglect or refusal to act within a reasonable time, for the appointment of three disinterested freeholders as arbitrators, to settle and adjust the matter in difference between the petitioner or petitioners and such board, relative to such tax or taxes, assessment or assessments.

In case of failure or refusal to compromise, application may be made to Justice of Supreme Court.

106. SEC. 3. AND BE IT ENACTED, That in case it shall appear to such Supreme Court Justice that the facts recited in the petition are true, then, and in that case, he may, in his discretion, if he shall deem it a proper case for arbitration, appoint such arbitrators as aforesaid, who, when appointed, shall, before entering upon their duties, subscribe before

Justice of Supreme Court may appoint arbitrators.

Oath and duties of arbitrators.

the clerk of the county, or a judge of the Court of Common Pleas, an oath for the faithful performance of their duties and the trust reposed in them as arbitrators in the matter in difference between the petitioner and such Board, as is recited in the petitioner's petition, and shall within ten days after their appointment and subscribing of the oath, view the land and real estate upon which the tax or taxes, assessment or assessments is laid or imposed, and after such view, shall notify all parties in interest, of the time and place when they will sit and hear all parties or their witnesses in relation to the matters referred to them; and shall, after hearing all parties and witnesses, and taking into consideration all taxes, assessments and impositions of every nature whatsoever, and of the value of the land and real estate in proportion to the taxes and assessments against the same, proceed to fix and adjust a specific sum or amount to be paid by the owner or owners, mortgagee or mortgagees, so petitioning, in full settlement and discharge of the tax or taxes, assessment or assessments, levied or imposed by any such public road board, under any laws of the nature, or for the purpose in the first section hereof referred to, against or upon the land and real estate particularly mentioned and described in the petition under which said arbitrators were appointed; *provided*, however, that the provisions of this act shall not apply to cases where land and real estate has been sold for taxes or assessments, and bought therefor by a bona fide purchaser, other than such public road board or its representative.

107. SEC. 4. AND BE IT ENACTED, That said arbitrators shall proceed to the performance of their duties with all reasonable dispatch, and shall make up and present their final report in writing to the justice of the Supreme Court appointing them, within sixty days after the date of their appointment, which shall be signed by at least a majority of them, and which, when presented, shall be ordered filed with the clerk of the county, there to remain of record; and upon the service of a certified copy of such finding and report of the arbitrators upon and tender of the amount named therein to such public road board, together with interest at legal rate from the date of filing the arbitrators' report, the president, treasurer or collector thereof shall receipt said tax or taxes, assessment or assessments against such land or real estate in full, and give a release and acquittance of the same from the lien of any such tax or taxes, assessment or assessments, and all past due interest, cost or penalties thereon, and said land and real estate shall by operation thereof, be freed, released and discharged from the lien and encumbrance thereof; the arbitrators shall be paid by either or both parties as the Court directs, but not to exceed five dollars each for each sitting, beside the view, and for not more than five sittings in all.

Proceedings and report.

Their compensation.

108. SEC. 5. AND BE IT ENACTED, That all acts inconsistent with this act shall be and the same are hereby repealed, and that this act shall take effect immediately.

[LAWS OF 1883, PAGE 43.]

Approved February 21, 1883.

AN ACT in relation to the powers of county public road boards.

109. SEC. 1. BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey*, That wherever any county public road board in any county of this state, has, or shall have, macadamized or paved, according to the Telford process, any public roads or avenues in such county, by virtue of authority granted by law for that purpose, it is hereby authorized and empowered to maintain and keep in repair, at the expense of the county, the whole and every part of any pavement so laid by it according to said process.

When Board has road macadamized, it may keep pavement in repair at expense of county.

110. SEC. 2. AND BE IT ENACTED. That this act shall take effect immediately.

Supreme Court of the

OCTOBER TERM, 1880.

No. 292.

THE ESSEX PUBLIC ROAD B

vs.

JACOB SKINKLE.

On Error to the Supreme Court of New

Brief of the Defendant in

J. FRANK FORT,

Counsel of the Defendant

NEWARK, N. J.

[LAWS OF 1883, PAGE 43.]

Approved February 21, 1883.

AN ACT in relation to the powers of county public road boards.

109. SEC. 1. BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey*, That wherever any county public road board in any county of this state, has, or shall have, macadamized or paved, according to the Telford process, any public roads or avenues in such county, by virtue of authority granted by law for that purpose, it is hereby authorized and empowered to maintain and keep in repair, at the expense of the county, the whole and every part of any pavement so laid by it according to said process.

When Board has road macadamized, it may keep pavement in repair at expense of county.

110. SEC. 2. AND BE IT ENACTED. That this act shall take effect immediately.

Office Supreme Court U. S.
FILED,
MAR 23 1891
JAMES H. MCKENNEY,
CLERK.

Supreme Court of the United States

OCTOBER TERM, 1890.

No. 262.

THE ESSEX PUBLIC ROAD BOARD,

vs.

JACOB SKINKLE.

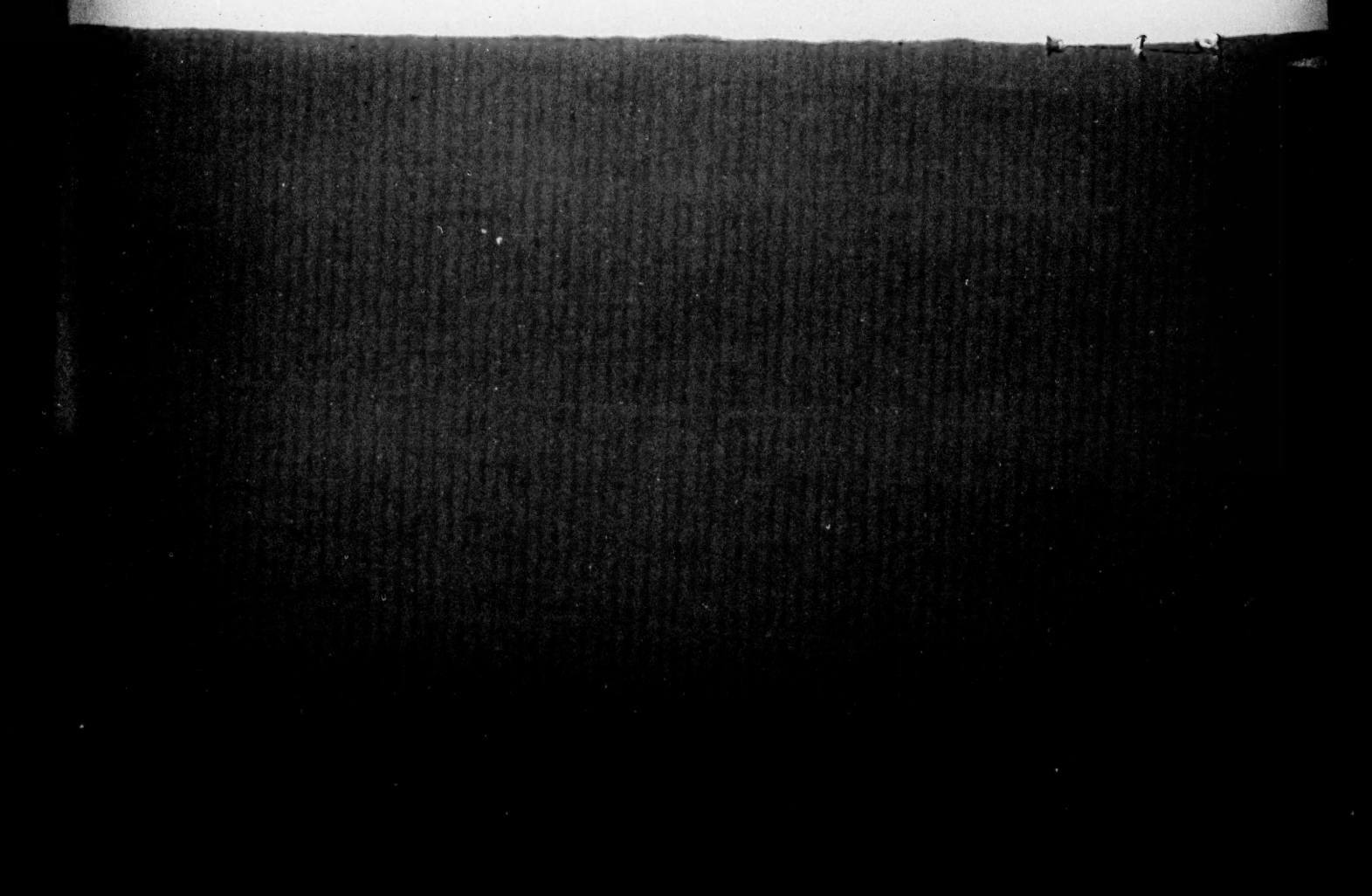
On Error to the Supreme Court of New Jersey.

Brief of the Defendant in Error.

J. FRANK FORT,

Counsel of the Defendant in Error.

NEWARK, N. J.:
WARD & TICHENOR, PRINTERS, 832 & 834 BROAD STREET.
1891.



SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1890.

No. 262.

THE ESSEX PUBLIC ROAD BOARD

vs.

JACOB SKINKLE.

ON ERROR TO THE SUPREME COURT OF NEW JERSEY.

BRIEF OF THE DEFENDANT IN ERROR.

STATEMENT.

The dates of the determination of this cause in the State Court, and of the writ of error, return, &c., to this Court, are clearly stated in the joint brief of the attorney and counsel of the plaintiff in error; said brief also contains a correct copy, at pages 16, 17, 18, 19 and 20, of so much of the laws of New Jersey as are necessary to be referred to.

In the statement of fact in the joint brief, extracts are made from the act of March 31st, 1875, in such a way as to make it appear that a certificate of sale vested in the Road Board and interest for a term of fifty years, in the land upon which the assessment in question was levied. In this respect, the statement of fact is an error. At page 17 of the joint brief, the provisions of the statute, as to the effect of said certificate, are clearly stated. The certificate does not give the purchaser any right, until after a stated time, in the land, and the statute reads as follows:

> "The board shall, upon the surrender of said certificate, "execute and deliver to said purchaser, his legal repre- "sentatives or assigns, a declaration of sale, under their "hands and seals, and duly acknowledged, as aforesaid

"briefly stating the facts of said assessment, advertise-
"ment and sale, together with a description of said land
"and real estate, and a statement of the time for which
"the same has been so sold; that said declaration of sale
"shall be recorded in the books of said board, and also
"in the records of deeds in the office of the Register of
"said county, upon the payment of a fee of one dollar in
"each case; *that until the recording of such declaration,*
"*the time for redeeming said land and real estate, as*
"*aforesaid, shall remain open, notwithstanding the*
"*said term of three years may have expired;* that such
"DECLARATION shall be presumptive evidence in all courts,
"and elsewhere, that such sale and proceedings were
"regularly made and had, according to the provisions of
"this act; and such purchaser or purchasers, and his, her,
"or their legal representatives shall, *by virtue thereof*,
"lawfully hold or enjoy such lands and real estate, with
"the rents, issue and profits thereof, for his, her, or their
"own proper use against the owner or owners thereof, and
"all persons claiming under him, her, or them, until the
"term shall be completed and ended for which the pur-
"chaser or purchasers shall have agreed to take the same,
"as aforesaid, and no longer; being liable for any injury or
"waste done or committed, in the same manner as a ten-
"ant for a term of years; but no *mortgagee*, whose mort-
"gage shall have been recorded or registered before any
"such sale, shall be *divested of his rights in and to said*
"*lands and real estate, until six months' notice of such*
"*sale shall be given to him in writing, by such pur-*
"*chaser*, or any person or persons claiming under him,
"which notice shall be served personally, if said mort-
"gagee be a resident of the said county, and if not, shall
"be addressed to his place of residence, as stated in said
"mortgage or assignment thereof."

In this case the defendant in error held a mortgage on the property at the time of the alleged sale to the Road Board; he was a *mortgagee;* he never had the *six months' notice* in the above cited section provided for; the Road Board never had, or took a *declaration of sale*, prior to the proceedings taken under the act called in question in this case. The defendant, Jacob Skinkle, *resided* in Essex county.

BRIEF OF ARGUMENT.

POINT I.

The construction of this statute made by the Court of Appeals of this State being that it is an act giving to an injured party a legal method to review the proceedings, and a remedy against injustice to restore his rights, it is conclusive upon this Court.

The act in question has been held by the Supreme Court of the State, upon two occasions, constitutional, and, finally, by the Court of Appeals in the last resort in all cases. These opinions are in the record, and their perusal will give a clear view of the case. (*Record*, page 74, line 109; *Record*, page 88, line 133; *Record*, page 90, line 138.)

These opinions hold that the act in question is an act, the object of which is to correct a mistaken and oppressive policy, (*Record*, page 96, line 144,) and follow the doctrine laid down in *Darlington* v. *The Mayor of New York*, 31 N. Y. 164; and in the *Record*, at page 78, line 109, the State Court say: "*Restoration to the injured party by the judgment of the tribunal established by this law of the sum taken from him in excess of the benefits conferred, cannot constitute an illegal taking.* * * In such legislation there is no infirmity."

This Court, in speaking of a statute and judgment of the Court of Appeals of the State of New York, in principle the same as this case, being one on a proceeding to condemn property for public use, said: "The construction of the statute of the State by the Court of Appeals and its decision as to the powers of the Supreme Court of the State to correct or set aside its own judgments, (on an assessment reward,) upon application within reasonable time, for *mistake, irregularity or fraud, are conclusive upon us.*"

Garrison v. *City of New York*, 21 Wallace, 203.

POINT II.

A tax or assessment is not a contract within the clause of the constitution under which the appellant seeks relief against the State statute in this case.

In New Jersey it is well settled that a tax is not a contract. It is an impost levied by the State.

Camden v. *Allen*, 2 Dutcher, 398.

An assessment against property, imposed through statutory processes, enforced upon the citizen by the power of the State, does not come within the definition of this Court of the term "contract," as used in the Constitution of the United States, in the clause under consideration.

"*The term 'contract' is used in the Constitution in its ordinary sense, as signifying an agreement of two or more minds, for considerations proceeding from one to the other, to do, or not to do, certain acts. Mutual assent to its terms is of its very essence.*"

Louisiana v. *Mayor of New Orleans*, 109 U. S. 285, (288.)

This last case was followed, and the definition of "contract" affirmed in

Chase v. *Curtis*, 113 U. S. 452, (464.)

In *Garrison* v. *City of New York*, 21 Wallace, 196, (203.)

This Court, speaking by Mr. Justice FIELD, says: "IT IS "NOT PERCEIVED HOW THIS FICTION (of a judgment being a "contract of record) CAN CONVERT *the result of a proceeding not "founded upon an agreement*, EXPRESS OR IMPLIED, but upon a "transaction wanting the assent of the parties into a contract, "within the meaning of the clause of the Federal Constitution, "which forbids any legislation impairing its obligation. The "purpose of the constitutional prohibition was the mainte- "nance of good faith in the stipulations of parties against any "State interference. If no assent be given to a transaction, no "faith is pledged in respect to it, and there would seem, in such "case, to be no room for the operations of the prohibition."

In this last case the question before the Court was, whether a statute of the State of New York, passed in 1871, which authorized proceedings to vacate an award of commissioners appointed to assess damages to property for a street opening, who had acted and reported under a statute of 1813, which declared their report "final and conclusive," was unconstitutional, because it impaired the obligations of a contract, and this opinion clearly affirms that all such matters of damages and assessments for benefits are statutory proceedings, and not contract obligations, within the meaning of the Constitution, and, as such, are within the power of the legislature to alter or abolish at will.

POINT III.

The power of the State to vacate or order vacated any inquest or imposition made by her direction for irregularity, or where error, or mistake, or injustice has resulted, and order new proceedings, cannot be doubted.

In the case of *Garrison* v. *City of New York*, 21 Wallace, at 204, this Court said: "The proceeding to ascertain the benefits or losses which will accrue to the owner of property when taken for public use, and thus the compensation to be made to him, is in the nature of an inquest on the part of the State, and is, necessarily, under her control. It is her duty to see that the estimates made are just, not merely to the individual whose property is taken, but to the public which is to pay for it. And she can, to that end, vacate, or authorize the vacation of, any inquest taken by her direction, to ascertain particular facts for her guidance, where the proceeding has been irregular or fraudulently conducted, or in which error has intervened, and order a new inquest, provided such methods of procedure be observed as will secure a fair hearing from the parties interested in the property."

The statute under review is set out at full length in the joint brief of the attorney and counsel of plaintiff in error, (pages 18 and 19 of brief,) and provides for the most specific methods of procedure, on notice to all parties in interest, and for a full review of the previous proceedings through the judicial tribunals of the State, and by the action of arbitrators, to be appointed by the Court, the appointment being left in the *discretion* of the Court. Before the Court will act, as by the petition in the record in this case is fully shown, the Court must be satisfied that *injustice* has been done.

(*Record*, pages 2, 3, 4 and 5.)

The State can repeal laws for the assessment for public improvements or proceedings for their enforcement. As against the State there can be no vested right in a municipal corporation in the granted power to tax, or in the taxes after they are assessed.

This is the law in New Jersey.

Dixon, Pros., v. *Jersey City*, 8 Vroom, 39.

Belvidere v. *Warren R. R.*, 5 Vroom, 193.

Same case, 6 Vroom, 584.